

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF THE:)
)
REGULAR MONTHLY BUSINESS)
MEETING)
_____)

DATE AND TIME: Tuesday, October 6, 1998
9:30 A.M.

PLACE: Board Hearing Room
8800 Cal Center Drive
Sacramento, California 95826

Reported By: Janene R. Biggs, CSR No. 11307



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APPEARANCES

Mr. Daniel G. Pennington, Chairman
Mr. Robert C. Frazee, Vice Chairman
Mr. Dan Eaton, Member
Mr. Steven R. Jones, Member
Mr. Stephen M. Rhoads, Member

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1 SACRAMENTO, CALIFORNIA

2 TUESDAY, OCTOBER 6, 1998, 9:30 A.M.

3 ---o0o---

4 CALL TO ORDER

5 CHAIRMAN PENNINGTON: Good morning, and
6 welcome to the October 6th meeting of the California
7 Integrated Waste Management Board.

8 Would the secretary call the roll, please?

9 THE SECRETARY: Board Member Eaton.

10 THE SECRETARY: Here.

11 THE SECRETARY: Frazee.

12 MEMBER FRAZEE: Here.

13 THE SECRETARY: Jones.

14 MEMBER JONES: Here.

15 THE SECRETARY: Rhoads.

16 MEMBER RHOADS: Here.

17 THE SECRETARY: Chairman Pennington.

18 CHAIRMAN PENNINGTON: Here.

19 We have a quorum.

20 If the public will note that Board

21 Member Chesbro is absent today as he is currently on a

22 leave of absence, and therefore his name will not be

23 included in today's roll call votes.

24

25

26 I/I

CHAIRMAN PENNINGTON: I'll start on the

MEMBER EATON: Yes. Mr. Chair, I have

6 First is a letter from Save Our Shores,

8 opportunity grants.

10 9-23-98, regarding the L.A. inspection for

12 In addition, I have a letter from

14 Partnership for Environmental Progress, dated

16 San Diego and the third cycle grant cycle.

17 A letter from Susan Blueston, executive

18 director Oakland Recycling Association, regarding also

19 the nonprofit used oil grant request.

20 A letter from the Honorable

21 Denise Moreno Ducheny, member of the assembly, also

22 regarding the nonprofit used oil grant proposal before

23 us today, as well as a letter from Susan Kattchee,

24 recycling waste supervisor for the City of Oakland,

25 again, regarding the nonprofit used oil program that

26 we're going to be taking up today, and one last

1 ex parte from Rick Zbur, the law firm of
2 Latham & Watkins, the Los Angeles office, regarding
3 Item 9 on today's agenda the, rigid -- the RPPC.

4 CHAIRMAN PENNINGTON: Thank you.

5 Mr. Jones?

6 MEMBER JONES: Mr. Chairman, all mine I
7 think were entered with the exception Evan Edgar this
8 morning from CRC talking about the Orange Avenue
9 Disposal site and the Intermountain Transfer Station.

10 CHAIRMAN PENNINGTON: Thank you.

11 Mr. Rhoads?

12 MEMBER RHOADS: I just had one, and that was
13 Intermountain Transfer Station

14 CHAIRMAN PENNINGTON: Mr. Frazee?

15 MEMBER FRAZEE: Yes, Mr. Chairman. I have a
16 letter from Assemblyman Bill Morrow regarding the used
17 oil nonprofit grants, and a letter from Susan Kattchee
18 of the City of Oakland Public Works Agency on the
19 nonprofit used oil grants.

20 CHAIRMAN PENNINGTON: Thank you. I have the
21 Assemblyman Bill Morrow letter and the Susan Kattchee
22 letter from the City of Oakland, and I also had a brief
23 conversation with George Larson dealing with the RPPC
24 and golf

25 For anyone in the audience who wish to
26 address us on any particular item, there are speaker

1 request forms in the back of the room, if you'll fill
2 one out, get it to Ms. Kelly here, we'll make sure that
3 you'll have an opportunity to talk to us about that --
4 those issues.

5 ANNOUNCEMENTS

6 Announcements. Agenda Item Number 1 is
7 pulled from today's agenda, as there are no items on
8 the consent calendar.
9 I'll ask if any Board member has any report
10 or anything they'd like to address the Board about.
11 If not, we'll hear from the Executive
12 Director, Mr. Chandler.

13 REPORT OF THE EXECUTIVE DIRECTOR

14 MR. CHANDLER: Thank you, Mr. Chairman, and
15 good morning, members.
16 Three items I'd like to cover this morning
17 in the announcement category, as you know are, tomorrow
18 will be the third biannual Tire Recycling Conference.
19 We'll kick that off in Santa Clara. This is an
20 important three-day event, which brings a number of
21 interested groups together to discuss a range of waste
22 tire related issues, including how to best market,
23 regulate, and clean up after these products. As you
24 know, California generates 30 million waste tires every
25 year, two and a half million every month. I think that
26 fact alone makes it especially important for industry,

1 government, and public groups to work together to think
2 up innovative new applications for the reuse of old
3 tires .

4 Among the many items to be discussed are the
5 civil appolications for waste tires, chrome rubber
6 markets, waste tires as fuel supplements, state and
7 federal grant programs for recycling waste tires,
8 rubberized asphalt concrete, tire facility and hauler
9 regulatory programs, and many other similar subjects.
10 So you can plainly see the conference is a positive
11 step in the direction of solving California's waste
12 tire dilemma.

13 Again, on the category of Announcements, our
14 Assembly Bill 59, workshops, are coming forward. The
15 AB 59 hearing panel and appeals workshop will be held
16 on October 26th and 27th and November 17th here in the
17 Board room. Input from soliciting parties on whether
18 changes are needed in the AB 59 Local Hearing Panel
19 Procedures and Appeals to the Waste Board. We are
20 requesting that workshop participants plan to attend
21 all three days. The workshops will consist of
22 facilitated groups, including a cross-section of
23 attendees addressing special problem areas

24 Next are SB 106666 workshops. These
25 workshops will be held in Sacramento on October 22nd
26 during the second day of the Board's October 21st/22nd

1 meeting, and again on October 28 in Diamond Bar from
2 10:00 a.m. to 3:00 p.m. These workshops will focus on
3 the procedures for jurisdictions to request and for the
4 Board to consider petitions for extension or reductions
5 from the 50 percent mandate in accordance with SB 1066
6 that passed last year and became effective in January
7 of this year.

8 Just a couple other items of note. I want
9 to make sure all the Board was aware that we did have
10 the Governor's signature on Assembly Bill 117.
11 Included with that was a directive from the governor,
12 and executive order, and I'll be in dialogue with the
13 Board as the month progresses on how you would like to
14 see us come forward with further implementation,
15 discussion around that executive order.

16 And on another bill of note, AB 715, by
17 Figaroa was also signed by the governor and, of course,
18 that deals with insurance issues, and I am pleased to
19 report that I have a preliminary analysis from KPMG
20 that we commissioned to begin looking at the effects of
21 that bill, and I'd like to begin circulating that
22 amongst your offices so that we can schedule some
23 briefings and have further discussion on how we would
24 implement the provisions of that bill.

25 And that pretty much summarizes my remarks
26 for this morning. Thank you.

1 CHAIRMAN PENNINGTON: Thank you

2 Mr. Chandler.

3 Any questions of Mr. Chandler?

4 Yes, Mr. Eaton.

5 MEMBER EATON: Yes. I was wondering if we
6 were successful at all in getting the Department of
7 Insurance's report regarding National Guarantee
8 Insurance Corporation, which is the company that
9 supposedly stands behind Waste Management, Inc.'s
10 captive insurance proposal?

11 MR. CHANDLER: Not to date, Mr. Eaton. We
12 have not received that report, and I will redouble our
13 efforts to inquire if we can get access to it.

14 MEMBER EATON: Thank you.

15 MEMBER JONES: Mr. Chairman?

16 CHAIRMAN PENNINGTON: Mr. Jones.

17 MEMBER JONES: On the AB 117 with the
18 executive order in place, I think that, you know, I'd
19 like to suggest that maybe staff comes forward with the
20 policies that we operate by under the tire program so
21 that all the Board members, both new and old and those
22 like me that are forgetful sometimes, know what we have
23 in place, because I think with that executive order,
24 that I think the funding levels an extra four million
25 or -- is it four million?

26 MR. CHANDLER: Well, essentially what the

1 order does is, it provides direction to the Board and
2 Department of Finance to allow the Board to access the
3 reserves and, if my recollection's correct, it's
4 approximately 3.8 to \$4 million available in that
5 reserve, which is perhaps less critical that we have
6 now that we have the extension of the program.

7 MEMBER JONES: I think -- I understand that,
8 but I mean I think because there is an extra 3 million,
9 we probably need to just look at, you know, how we've
10 been doing business and try to make sure we have a game
11 plan for how that extra money is going to be spent, if
12 that's reasonable.

13 MEMBER EATON: I think that would be one of
14 the charges that the Chairperson, Mr. Pennington, and
15 Mr. Frazee would come up with their report as part of
16 their overall plan in the report. I don't see that
17 either the governor's executive order and/or the
18 request from the legislature to prepare a report are
19 inconsistent or not going along the same lines. So,
20 hopefully, I think that you're absolutely right, we
21 ought to have a game plan for what that is, whether
22 that be a separate game plan or just, you know, part of
23 the overall package, it should be part of that.

24 CHAIRMAN PENNINGTON: Right. I would
25 certainly concur with that. We will look and see
26 further at •the executive order as to what the governor

1 is requesting us to do and prepare the necessary report
2 to the Board in terms of what direction we need to go.

3 MR. CHANDLER: Let me just build on that.
4 There's two tracks we could take here, and I think, as
5 I understand Mr. Eaton's direction, we would defer any
6 real policy discussion that the Board may entertain
7 around the available dollars and perhaps have it more
8 as in conjunction with the report that we would be
9 submitting to the legislature, first draft in May,
10 final report in July -- is that correct -- versus
11 anything that you'd like to see done as a reaffirmation
12 or reconsideration of our existing policies, our rank
13 in structure, our selection process for any sites prior
14 to that policy recommendation report to the
15 legislature.

16 Now, I'm just trying to get clarity on
17 timing here. I'm comfortable with that. As you know,
18 Mr. Chairman, you're leading that effort to oversee
19 that report to the legislature. That's where you'd
20 like to see a discussion around how we would propose to
21 utilize the allocation's dollars. That gives me the
22 timetable, and I could work against it.

23 CHAIRMAN PENNINGTON: I think with the fact
24 that he issued an executive order, there's some urgency
25 in the governor's mind that we should move forward, and
26 I think we need to look at that and make a decision as

1 to how fast we need to move forward, and I would, you
2 know, like to -- I know we need to talk to the
3 Department of Finance and see how fast they will be
4 able to make money available to us. So I'd like to do
5 that and then come back to the Board and explain what
6 direction we need to take.

7 MR. CHANDLER: All right. So perhaps what
8 I'll do then is work with Karin Fish. We'll put in
9 the -- is it is Section 27, Karin? Is that what the
10 process is?

11 MS. FISH: Yes.

12 MR. CHANDLER: I think that typically
13 results in additional funding available to the Board
14 through an expansion of our -- expenditure authority,
15 probably in May of 1999. There's been some discussions
16 with finance that we can begin utilizing those funds
17 prior to that, but why don't we come back to you with
18 just a timetable on --

19 CHAIRMAN PENNINGTON: All right. That'll be
20 good.

21 MR. CHANDLER: -- our discussions with
22 finance, and what dollars -- concrete what dollars are
23 available and we can talk more about implementation
24 then.

25 Does that sound fine?

26 CHAIRMAN PENNINGTON: Yes, that's fine.

1 Okay. We'll move on to the report on the
2 21st Century policy development process.
3 Mr. Eaton and Mr. Jones are the working
4 group on that. Do you have anything you want to report
5 this morning?

6 REPORTS OF THE BOARD'S COMMITTEES

7 MEMBER EATON: Sure. I think we have some
8 good news. Mr. Chandler can shed some light with
9 conversations he's had with Ray Anderson in terms of -

10 MR. CHANDLER: Well, we were looking to
11 provide a kind of a preeminent speaker in the area of
12 looking forward as to what some of the manufactured
13 industrial thinking is out there as businesses
14 throughout the United States and the world look at
15 globally their responsibility on consumption of natural
16 resources, and the speaker Mr. Eaton and myself heard
17 back in Chicago at the Waste Expo was Ray Anderson,
18 president of interface, and we've been working with his
19 office out of Atlanta, Georgia to try to secure his
20 presence as a keynote speaker for our upcoming Issue
21 Summit. We seem to have now settled on January 20th,
22 1999 at the -- help me out here, Mr. Jones --
23 Industry --

24 MEMBER EATON: City of Industry Sheraton.

25 MEMBER JONES: Sheraton in the City of
26 Industry.

1 MR. CHANDLER: Which is, of course, in
2 Southern California, and I think that will really serve
3 as an appropriate kickoff to our issues that we intend
4 to bring forward through both the summit itself and at
5 a future search conference, followed by some policy
6 recommendations with the new administration. So I'm
7 pleased with Mr. Anderson's willingness to accept that
8 invitation and look forward to continuing to work with
9 the Oversight Committee to move this whole effort
10 forward.

11 CHAIRMAN PENNINGTON: Very good. Okay.
12 I have here Presentation of Resolution of
13 Kern County Waste Management. Were we doing that this
14 morning?
15 Okay. Good. Carroll Mortensen.

16 AGENDA ITEM NUMBER IV

17 MS. MORTENSEN: Good morning, Mr. Chairman
18 and Board members, and welcome Member Rhoads. My name
19 is Carroll Mortensen with the Board's Used Oil Recycling
20 program, and I'm going to take a few minutes this
21 morning to describe the presentation of the resolutions
22 to Golden West Motor Sports, Kern County Waste
23 Management Department, and Mason Run Raceway,
24 acknowledging their support of used oil recycling and
25 refined lubricants.
26 As you may know, the structure of the

1 Board's Used Oil Recycling program lends itself towards
2 the Board's role of being one of supporter and guide for
3 local government. We do this for a variety of avenues,
4 mainly technical assistance and grants. We realize that
5 the used old recycling issue is a local issue and is well
6 serviced by local attention. We encourage locals to do
7 their homework and discover who the at-home mechanics are
8 in their jurisdictions, what are their habits, what
9 languages do they speak, what appeals to them, and who do
10 they listen to. Board staff have assisted in this effort
11 by holding workshops and providing tools to local
12 governments to help them define their target audiences,
13 the at-home mechanic.

14 We also provide the part the locals really like, annual
15 funding for block ramp programs and for for a competitive
16 process to the opportunity grant program so they can
17 implement what they've learned.

18 I spoke briefly about locals finding out who the at-home
19 mechanics are in their jurisdictions. This has been quite
20 a learning curve for Board staff as well as the locals.

21 The at-home mechanic is not the same person who you
22 target with the bottle and can recycling program. He or
23 she often does not respond to the same type of green
24 messages that local governments use in regular recycling
25 programs. The at-home mechanic is an
26 entirely different animal.

1 The folks being recognized for the
2 resolutions today exemplify what the Board is trying to
3 accomplish through its Used Oil Recycling program. The
4 development of effective outreach methods designed with
5 a target audience in mind and deliver to them in a
6 setting that they're familiar with and by spokespeople
7 and role models that they respect and identify with.
8 Kern County Waste Management Department
9 began the Used Oil Recycling program in 1995 and added
10 a re-refined oil promotion component in 1997.
11 Chuck Magee, with the support of his boss,
12 Daphne Washington, and the staff at Kern County have
13 put together an outstanding used oil recycling
14 re-refined lubricant promotion by identifying their
15 target audience, NASCAR race fans, they found out that
16 about 80 to 90 percent of the people that come to those
17 races every weekend change their own oil. They used
18 spokespeople that the audience identify with, the race
19 car drivers. They delivered the message at a venue
20 that they were familiar with, the racetrack and local
21 auto parts stores. Golden West Motor Sports is the
22 race team that Kern County used as their first example
23 of a race team that properly managed their used oil and
24 closed the loop by running re-refined oil in their
25 cars. Golden West Motor Sports fields a Pontiac
26 Grand Prix Winston West Series car. You can likened

1 the Winston West Series to Triple A baseball is to the
2 Majors. Winston West would be the one running below
3 Winston Cup. The cars are identical to Winston Cup
4 cars, and the engines can produce up to 600 horsepower
5 and cost up to \$40,000. So Ray Claridge, the team
6 owner began using re-refined oil in his race cars in 1995
7 and has not had an oil related engine failure this whole
8 time.

9 That's an indisputed testimonial to the quality,
10 reliability, and viability of re-refined
11 lubricants. In fact Mr. Claridge has used re-refined
12 oil in all his cars since he started using it in his
13 race cars.

14 The venue that Kern County chose begin its
15 campaign is Masonry and Raceway in Bakersfield. It's the
16 fastest short track in the west and the birthplace
17 of the NASCAR Winston Truck Series, are its two claims
18 of flame. They race there just about every weekend from
19 spring to fall, and thousands of people come to
20 enjoy the racing action.

21 Mr. Marion Collins, the owner of the
22 raceway, and his staff have been a key component to
23 Kern County's success. They have been staunch supporters
24 and advocates in the county's development of
25 the campaign. This is evident by the High School
26 Racing program and the Street Stock Racing program that

1 boasts almost all the participants using re-refined
2 lubricants in their race cars.
3 Over Memorial Day weekend in May,
4 Mr. Pennington joined participants at a two-day
5 workshop presented by the county that highlighted the
6 success of the program. Participants got to see the
7 program in action and were very impressed. It sure
8 wasn't a booth at the home and garden show or a booth
9 at the Earth Day Festival. This was target audience
10 audience all the way.
11 Being in the stands at the race event that
12 evening, it was evident that the program was working.
13 People knew what re-refined oil was. They were talking
14 about it, and it doesn't if stop there. The county has
15 seen a 37 percent increase in the amount of used oil
16 recycled in the county since the program was
17 implemented, and they've also had re-refined oil
18 stocked in dozens of retail establishments in the
19 county, and it's moving off the shelves.
20 To acknowledge the hard work and ingenuity
21 of Kern County, Golden West Motor Sports, and Masonry
22 Raceways, staff prepared resolutions commending them.
23 Mr. Pennington will present these resolutions at
24 Masonry Raceway October 15th and 16th. The workshop
25 will feature many presentations on the technical info
26 surrounding re-refined oil, how to write re-refined oil

1 friendly bids for fleets, target audience
2 identification, incorporating a re-refined oil purchase
3 message into our used oil recycling message and doing
4 outreach at sporting events, including racetracks, and
5 many other topics designed to bring local governments
6 and private business together to teach -- to learn how
7 to reach the at-home mechanic.

8 Thank you for your time this morning, and
9 thank you for your support of these innovative
10 programs.

11 Are there any questions?

12 CHAIRMAN PENNINGTON: Okay

13 MS. MORTENSEN: Thanks

14 CHAIRMAN PENNINGTON: Thank you, Carroll.

15 I might add that it is an exciting program.
16 Of course, I enjoy the racing, and I think the 7 car,
17 as it's called, is in Number 2 place in the point
18 standing, and it's running around with a clean -- the
19 1-800-CLEANUP all over it, and it's got our logo on it,
20 and so I think this is really a fantastic program.
21 And, of course, the chairman enjoys it because he likes
22 to go down there and watch those races
23 Okay. We're going to move to Continued Business Item A,
24 Nonprofit Oil Grants. Consideration
25 of the 98/99 Fiscal Year Nonprofit Used Oil Grant
26 Awards. Judy Friedman

1 CONTINUED BUSINESS ITEM A
2 MS. FRIEDMAN: Good morning,
3 Chairman Pennington, Board members.
4 In February of this year, the Board adopted
5 the criteria and process for the third cycle Used Oil
6 Nonprofit grants. Since that time, staff prepared the
7 Notice of Funding Availability, solicited applications,
8 and reviewed the grant applications. This item then is
9 the culmination of that work and is the recommendation
10 for awards for the grants. In making these
11 recommendations, staff was guided by the Board's
12 criteria and process.

13 With that I'll turn the presentation over to
14 Shirley Willd-Wagner, supervisor of the used oil
15 household hazardous waste grant section.

16 MS. WILLD-WAGNER: Good morning,
17 Chairman Pennington and Board's members.
18 As Judy mentioned, this morning's item
19 presents staff's recommendation for the award of the
20 1998/99 Used Oil Nonprofit Grant Award. Staff is
21 recommending 18 nonprofit grants for a 2.5 million --
22 \$2,518,505.

23 As you're aware, the California Used Oil
24 Recycling Enhancement Act specifies that certain
25 activities concerning the recycling of used oil be
26 implemented and undertaken by the Board. Grants to

1 nonprofit organizations are one of those activities.
2 After certain other expenditures have been made the
3 used oil fund, 10 percent of the remainder of that fund
4 is used for the nonprofit grants.
5 I'll review the grant award process. In
6 1996 the Board reviewed the general review criteria and
7 a process for awarding all grants by the Board. The
8 process specifies that staff develop a proposal for
9 the -- assigning points to the general review criteria,
10 as well as a detailed evaluation procedure for each
11 grant cycle. Those proposals are brought to the
12 appropriate committee and Board for approval. With
13 this cycle the nonprofit grant, the proposal on
14 specific points for general review criteria where are
15 brought before the Board in February of this year.
16 Just a quick review of those general review
17 criteria. The grants, each proposal is scored for
18 need, how the the project addresses the local and
19 statewide needs. The objectives, if they're measurable
20 and specific. The methodology, how the project will
21 actually be undertaken. An evaluation component,
22 whether or not there's a good, solid proposal to
23 evaluate the success of the project, whether the budget
24 is complete and cost-effective, and completeness of the
25 whole grant application. Coordinated local support was
26 a big part of that, the nonprofit grant.

1 I'll mention a couple of the points this
2 year that the panel specifically focused on for the
3 nonprofit grant. The highest number of points is for
4 the documented need for the project. And, again, we're
5 not looking for somebody saying, "I need money." We're
6 looking for somebody that says, "There's a need in our
7 community. This is lacking an actual identified gap in
8 the service availability."
9 We were looking carefully for strong support
10 for local governments. We didn't just want a letter
11 saying this agency is good, but instead we wanted to
12 have support that showed that the local government knew
13 what was being proposed in the project, and that that
14 proposal fit in well with the program that's been
15 implemented by the local government. That's so that
16 the constituents can receive a consistent used oil
17 recycling message and so the left hand knows what the
18 right hand is doing.
19 We're also looking for a coordination plan
20 to work with any other involved organizations or
21 agencies. This could be other statewide agencies or
22 other nonprofits that operate in the community to avoid
23 in any kind of duplication and to make sure there's
24 coordination; and we were looking for a strong program
25 evaluation component.
26 We did have several applicants. The used

1 oild program has been going on now for about four or
2 five years, and several of the applicants have been
3 receiving grants in the past. So we're locking to see
4 whether or not there has been some evaluation done to
5 see whether or not it's been successful in the past.
6 Are we meeting our goal? Are we increasing the used
7 oil recycled? Et cetera, et cetera. So we were
8 looking for that this year also.
9 I'd like to go into the specific review
10 process. Three member panels were convened.
11 Representatives on each panel were from the financial
12 assistance branch and the used oil household hazardous
13 waste branch. All panel members attended an
14 orientation meeting where we discussed the
15 interpretation of criteria. And everyone received an
16 actual scoring structure. Then, of course, the
17 applications were distributed. Each member of the
18 panel went off to score the application the individual
19 used in the criteria that the Board developed. Then
20 the panel -- this is the key one, I think -- the panel
21 meets as a team to discuss each application in detail
22 and to reach a consensus on each criterion. So they
23 don't just set an average -- take an average score of
24 all the different panel members, but they actually
25 discuss in detail and spend quite a bit of time on each
26 application to read through it and come up with a

1 consensus. The chairpersons from each panel then would
2 meet to just make sure that the three panels also had
3 scored the applications consistently.
4 This year, in order to double-check
5 everything, we also implemented a double blind review
6 process. We just started this cycle. We chose six
7 applications at random, and those six applications were
8 reviewed by two different panels.
9 The resulting recommendations. The scores
10 were within 5 points in each case, and in each case the
11 recommendation either to fund or not fund was the same
12 in each case.
13 For the ranking, we come down to the panels
14 have all met. We have received 46 applications with a
15 total of over 7 million in request, and it should be
16 noted that that's obviously significantly more money.
17 We had about 2.5 million available. In past cycles
18 we've been pretty much able to fund all of the
19 qualifying applications. This cycle we were looking at
20 only funding approximately a third of the applications.
21 All the panels completed their evaluations
22 and the scores are merged, applications listed in rank
23 order. Sometimes projects were identified for partial
24 funding, if there was something that was ineligible in
25 the application or perhaps a cost of another used oil
26 recycling effort, or if there were errors in

1 calculation. Things like that. The resulting list is
2 your Attachment 2.
3 Staff is available to meet with any
4 applicants who have not been recommended for this
5 year's funding, and we do send out written comments
6 about the application as well as meet with them over
7 the phone or in person to work on the application, help
8 give advice on how to improve it for the next cycle,
9 and we've been pretty successful with doing that in
10 past application cycles.
11 Staff therefore recommends that the Board
12 approve Resolution Number 98-286, the approval of the
13 98/99 Used Oil and Nonprofit Grant Awards.

14 Are there any questions?

15 CHAIRMAN PENNINGTON: Questions of staff?

16 CHAIRMAN PENNINGTON: Mr. Eaton?

17 MEMBER EATON: Yes.

18 With regard to the process, if a question
19 does arise -- because I've many gotten several letters
20 with regard to that there's been no kind of dialogue
21 between the panels and the applicants -- if a question
22 does arise in the mind of the panel, what is the
23 process for resolving that question?

24 THE WITNESS: If a question arises -- the
25 panel members have a question about the application?
26 Is that what you're asking?

1 MEMBER EATON: Well, from time to time
2 certain evaluations were made, but it looks like,
3 according to here, certain determinations were made
4 that may or may not be completely accurate. So does
5 the panel go and then speak to the people who apply to
6 get clarification, not to make an argument for or
7 bolster the case but for clarification?

8 MS. WILLD-WAGNER: Clarification. The
9 panels -- and this is part of the full Board process,
10 for review of all grants -- can only score on what's
11 actually submitted in the application and proposal. It
12 would not be at all fair to take additional input or
13 even clarification from certain applicants and not from
14 everyone, if the committee's had questions. So what
15 we've done is, if there's -- if there is something that
16 a panel has a concern about, they're sometimes, again,
17 asked, the supervisor or other staff members, to review
18 it to check for things like duplication or to look at
19 the application and get their additional input, but at
20 that point it would not be an impartial process if we
21 contacted individual grantees.

22 MEMBER EATON: But if there needs to be a
23 clarification -- it could have very well been just a
24 typographical error -- they would be bounced out
25 without any kind of recourse; is that correct? Under
26 your process?

1 MS. WILLD-WAGNER: Taken to the extreme,
2 yes. Usually a typographical type error is pretty
3 obvious. If something is missing like a title page, or
4 even a signature, a cover page, generally those kinds
5 of things do not cause disqualification. Pretty
6 obvious things are clear enough.

7 MEMBER EATON: I'd like to hear from the
8 public. Then I'd like to ask some questions of staff.

9 CHAIRMAN PENNINGTON: Okay.
10 First is Mr. Paul Fickas.

11 MR. FICKAS: Good morning, Board members and
12 Mr. Chairman. My name is Paul Fickas. I'm represent
13 the Partnership for Environmental Progress.
14 This may be premature. I haven't seen the
15 report. They may have been awarded already, so I may
16 not need to speak. So I'm basically here this morning
17 to answer any questions. If there are any concerns
18 from the staff or the Board, I'd be more than happy to
19 address those and take them back to San Diego.
20 Is the report in the back, or is it public
21 or --

22 CHAIRMAN PENNINGTON: It should be public,
23 yes.

24 MR. FICKAS: Because I don't remember seeing
25 it.

26 CHAIRMAN PENNINGTON: It was part of the

1 agenda.

2 MR. FICKAS: Yes.

3 CHAIRMAN PENNINGTON: So if you got an
4 agenda item you should have gotten a list of the
5 recommended funding.

6 MR. FICKAS: So this is an action item
7 today, this morning?

8 CHAIRMAN PENNINGTON: This is an action item
9 today.

10 MR. FICKAS: Okay.

11 CHAIRMAN PENNINGTON: And what is your
12 group?

13 MR. FICKAS: The Partnership for
14 Environmental Progress. It's the one you received
15 several letters from, Chaney and Morrow.

16 CHAIRMAN PENNINGTON: I don't see it on this
17 list. Am I correct?

18 MS. WILLD-WAGNER: That's correct.

19 MR. FICKAS: Excuse me?

20 CHAIRMAN PENNINGTON: They're not on the
21 list to be funded.

22 MR. FICKAS: Okay. That's all I have.

23 Thank you.

24 MR. CHANDLER: Is there any way, Mitch, that
25 you could put the -- you know, A-6 on the screen so
26 that -- staff funding recommendations for the 1998/99

1 Used Oil Nonprofit Grants, recommended applicant?

2 CHAIRMAN PENNINGTON: Mr. Rhoads.

3 MEMBER RHOADS: The last speaker. I mean,
4 if you're project's not being funded, is there some
5 comments you want to make to the Board? Or not being
6 proposed to be funded, I should say.

7 MR. FICKAS: I understand this list is what
8 the staff is recommending to you to approve; correct?

9 CHAIRMAN PENNINGTON: Correct.

10 MR. FICKAS: Well, obviously I'd like to
11 have reconsideration to have our item be approved by
12 the Board. As you can see, there's been an effort
13 within the local government to have this report on this
14 item advance in the community, and I'd like to see the
15 support of the staff to recommend to the Board that it
16 be taken up for reconsideration. And Mr. Eaton brought
17 up a good point. I believe as of last night our agency
18 hasn't been notified of whether or not it was even
19 going to be considered or not considered, and maybe
20 there was some clarification that could have been
21 clarified before the report was recommended to you. So
22 if there is anything I could do, or our agency could do
23 to help clarify maybe something, that it could have
24 been a typographical error, or maybe a missed page, but
25 if it was the case of that, I think we'd like to be
26 reconsidered.

1 So I appreciate your question, Mr. Rhoads.

2 CHAIRMAN PENNINGTON: Does Staff want to
3 respond to that?

4 MS. WILLD-WAGNER: Just to say that on
5 September 4th, before this item was originally
6 suggested -- was originally scheduled to be heard, a
7 fax was sent to all agencies that applied, both those
8 who were being recommended for funding and those who
9 were not, and they were told at that point when and
10 where the Board meeting was and that who was being
11 recommended and who was not, and subsequent, once that
12 meeting was postponed, we sent an additional fax.
13 First one was September 4th. The second one was right
14 after that rescheduled meeting to notify them of the
15 location.

16 CHAIRMAN PENNINGTON: At some point did we
17 tell them why they were being rejected?

18 MS. WILLD-WAGNER: At any time when they
19 call you us we send staff comments about -- the review
20 panel comments and summary, yes.

21 CHAIRMAN PENNINGTON: But we don't just
22 automatically --

23 MS. WILLD-WAGNER: No.

24 MR. FICKAS: I was just going to clarify
25 once more. I mean, I believe there was a gentleman
26 that -- Mr. Steve Castaneda -- that came and addressed

1 the Board on the 17th, and I don't know if there was any
2 attempt after that moment to talk to the agency. I
3 could check and verify it, but as far as last night I
4 don't believe there was any communication between the
5 staff and the agency after the September 17th
6 presentation, and I believe today was just going to be
7 just whether or not to see if it was on the
8 recommendation list. So, I mean, I don't know if
9 Mr. Eaton was alluding to the fact that some agencies were
10 not being notified, or I don't know what's going
11 on. If that's the case, maybe there can be some sort
12 of a reconsideration process, or something that we can
13 find out that wasn't -- the reason why they weren't
14 approved, and then maybe we can go from there, because
15 I know this program's doing a lot of good things down
16 in the San Diego area, and Mr. Chaney and Mr. Morrow
17 and a lot of other folks down in the area are big
18 supports of this program. So we may want to try to see what
19 we can do to find out what the problem was and try to fix
20 it.

21 CHAIRMAN PENNINGTON: I think the staff
22 would be more than happy to sit down with the agency and go
23 through what the reasons were for them to reject it or why
24 it fell where it was. I think that's -- you know, the staff
25 is more than willing to do that.

26 MS. WILLD-WAGNER: That's correct.

1 MR. FICKAS: Yeah, we'd be more than willing
2 to sit down with them if that's the wishes of the Board
3 and go forward and try to resolve something.

4 CHAIRMAN PENNINGTON: Mr. Frazee.

5 MEMBER FRAZEE: Question of staff regarding
6 this item.

7 Did I understand that this year's funding
8 did not spread to cover all those who qualified, who
9 met to cutoff, and I understand that was 70 percent?

10 MS. WILLD-WAGNER: The funds available
11 actually do cover all of those who made the 70 percent
12 of the general criteria.

13 MEMBER FRAZEE: Oh, they do.

14 MS. WILLD-WAGNER: Yes.

15 MEMBER FRAZEE: Then do we have a ranking of
16 those who fail to meet that 70 percent cutoff.

17 MS. WILLD-WAGNER: We, we do. All proposals
18 have been ranked and given a number score.

19 MR. DELMAGE: If I might clarify, they're
20 ranked with respect to the score. They're in like a
21 69 rank or a 68 rank, but they're not ranked within
22 that score.

23 CHAIRMAN PENNINGTON: In other words, there
24 may be three that are in 69 and five in 68, and so on
25 and so forth? It doesn't just go 69, 68, whatever.

26 MR. DELMAGE: Right.

1 MS. WILLD-WAGNER: Correct.

2 MEMBER FRAZEE: Do you know where this
3 particular one fell, the one that's in question?

4 MR. DELMAGE: It was ranked in the 69 rank
5 with five other candidates.

6 MEMBER FRAZEE: With how many other?

7 MR. DELMAGE: Five.

8 MS. WILLD-WAGNER: Four others.

9 MR. DELMAGE: Or four others. Five
10 altogether?

11 MEMBER FRAZEE: Five total. They just
12 missed the cutoff.

13 MS. WILLD-WAGNER: Correct.

14 MEMBER EATON: When did the panels actually
15 complete their review?

16 MS. WILLD-WAGNER: The applications were due
17 at the end of May. The agenda item for the September
18 Board meeting -- probably mid-August, early August to
19 meet the deadline for the September meeting.

20 MEMBER EATON: Do you think a fairer process
21 would be is that if the Board would consider changing
22 the process by which an evaluation was made and then
23 rather than picking out or singling out any individual
24 applicant, that there is an additional comment period
25 after your comments are made so that all of the
26 applicants have a certain period of time by which to

1 comment about upon your comments so that we get the
2 very best applicants and the very best information,
3 which then also protects your concern about having to
4 go out and check everyone, that you have a comment
5 period so that people can provide and refute or at
6 least bolster --

7 MS. WILLD-WAGNER: Provide additional --

8 MEMBER EATON: Right. And I'm just asking
9 as a process question.

10 MS. WILLD-WAGNER: I think that there are
11 some agencies that do it like that. I think it would
12 involved some additional staff resources, and it would
13 length then the period of time.

14 I think I understand you to be saying then
15 that we make a certain ranking and evaluation and then
16 have an open comment period for additional responses to
17 that.

18 MEMBER EATON: No. I don't think you rank
19 at that point.

20 MS. WILLD-WAGNER: Okay.

21 MEMBER EATON: I think what you simply do is
22 you evaluate and try and come up -- you have your own
23 internal mechanism for ranking, but there may very well
24 be some oversights on behalf of any individual. After
25 all, you are dealing many times with community
26 organizations who may not have some of the expertise or

1 technical skills that some of the other applicants do,
2 or have the expertise to get out and get a grant writer
3 to be able to frame certain information. They're not
4 with -- To start with, they're not on a level playing
5 field, and I'm just saying that in terms of fairness in
6 the process is a period by which, you know, the
7 comments can then be, you know, shared and then
8 resubmitted based upon that

9 MS. WILLD-WAGNER: I think if that
10 type of a process was specified and directed by the
11 Board, it could be implemented. It would have to be
12 carefully outlined as to what could be additionally
13 submitted.

14 And I like the comment about not ranking them, because
15 I think once we make public, that would not be -

16 MEMBER EATON: Correct

17 MS. TOBIAS: I think the additional
18 concern we have is that when we do this process, we
19 basically -- it needs to work on a really impartial
20 level, and so one of the problems in sending comments
21 back out -- and I'm not going to say we can't find a
22 way to do this, but I'm just raising it to be full
23 disclosure at this point -- is that we would not want
24 applicants to see other applicants' proposals,
25 comments. It needs to be basically a pretty
26 confidential process at that point, and so, you know,

1 where you had, for instance, several bidders on a
2 program, where you could maybe talk to them
3 individually or something like that, that seems a
4 little bit more manageable. I think in a process like
5 this where you have quite a number of bidders on a
6 fairly large program that that will take, I think, not
7 only some staff resources and add probably around, I
8 would I guess, four to six weeks to the process, that
9 we would have to basically find a way to assure
10 ourselves that the confidentiality of those proposals
11 that have been turned in is maintained, and I think
12 that's going to be a challenge.

13 MEMBER EATON: I would agree with you with
14 the exception that you wouldn't circulate the entire
15 comments of everyone. You would simply go back to the
16 applicant and say, "Here's what we have evaluated your
17 application on." That would be a one to one. There
18 would not be that Applicant A would get would also get
19 Applicant B, C, and D's comments, because that --

20 MS. TOBIAS: I understood that it would be a
21 one to one. I just think that, you know, there's a --
22 I would be concerned that we would need to make sure
23 that people understood that those comments need to be
24 kept to themselves. I think there's a lot of people
25 who work, you know, together in this are, and I think
26 it'll be a challenge to deal with that.

1 I also think Shirley said that she thought
2 there were some programs that did that, and I think we
3 should look at those before we launch into it. You
4 know, they should have some experience with that and be
5 able to tell us whether that's really viable.
6 I think one of the other things to keep in
7 mind in this process is that a lot of the entities that
8 propose on these programs do so on a -- I won't say a
9 regular basis, but there's always a -- what's the word
10 I want -- there's always a learning period that goes on
11 with these, and I think that particularly the first
12 year that people apply they're not always used to the
13 requirements that you have to do with state programs,
14 so that some of the other ways to deal with this is to
15 make sure at the beginning of the process that people
16 understand what goes into doing a proposal package, how
17 these things are ranked, how important it is to make
18 sure that all your information is there, and that might
19 be another way to deal with it is to move to the front
20 of the process rather than something in the middle that
21 might be somewhat unwieldy.

22 MEMBER EATON: Let me take another little
23 tact here, because I still do have some concerns about
24 the process --

25 MEMBER RHOADS: Could I just make a comment?

26 MEMBER EATON: Sure.

1 CHAIRMAN PENNINGTON: Certainly, Mr. Rhoads.

2 MEMBER RHOADS: First off all, I think I
3 probably have to make a general comment. I'm on the
4 Board of one of the programs that did not get funded,
5 so there may be certain motions and so forth that are
6 made today that I'll have to abstain from, but I would
7 like to echo Mr. Eaton's --

8 CHAIRMAN PENNINGTON: Is your mic on?

9 MEMBER RHOADS: I'm sorry. I would like to
10 echo Mr. Eaton's comments on the process. I think the
11 next round for these nonprofits is two years from now,
12 and even though it might entail more staff work, I
13 would be very interested in exploring different ways of
14 going about doing these grants with maybe a little bit
15 more of a communication link with the applicants,
16 because some of these people, like Mr. Eaton said, are
17 not as sophisticated as other grant writers. I think
18 when we get to that next round I would be very
19 interested in exploring different alternatives that we
20 might -- that might be available to us.

21 CHAIRMAN PENNINGTON: What is the universe
22 we're talking about here? We have, I believe, there's
23 18 here that were approved. How many applicants did we
24 not?

25 MS. WILLD-WAGNER: Forty-six applicants.

26 CHAIRMAN PENNINGTON: Forty-six.

1 MEMBER EATON: Mr. Chair, one of the things
2 that I wanted to ask is, as some of you may remember,
3 from time to time we serve our computer system and we
4 spend a lot of money in our computer system, and I
5 discovered at least, and perhaps you can shed some
6 light on this, is that perhaps according to my figures,
7 we still have -- and this may solve the problem until
8 we're able to follow what Mr. Rhoads had sort of talked
9 about, a more communicative process -- are you aware
10 that we have approximately \$840,000 from the 1992-93
11 oil demonstration program grants? Are any of you, that
12 still have not been -

13 MR. DELMAGE: Closed out.

14 MEMBER EATON: Yes. Are you aware of that?

15 MR. DELMAGE: I know that there's money that
16 is continually reverting back into the fund.

17 MEMBER EATON: And so that money is
18 available if we were to do additional grants?

19 MR. DELMAGE: According to the formula
20 specified in statute.

21 MEMBER EATON: So the answer is "yes"?

22 MR. DELMAGE: The answer is yes.

23 MEMBER EATON: So we have \$840,000 extra?

24 MR. DELMAGE: No. It needs to be put in at
25 the top of the funding, and then it goes through a
26 process of allocating certain portions to different

1 parts of the program, so approximately 10 percent of
2 that amount might be available.

3 MEMBER EATON: Where where would the other
4 90 percent go to?

5 MR. DELMAGE: 50 percent of it would go to
6 the Block Grant program. 40 percent of what's
7 remaining would go -- let me put up a --

8 MEMBER EATON: Wait a minute. You say
9 "block grant." I have \$443,000 from the 93/94 second
10 cycle. So now I'm up to 1.2. I have roughly \$930,000.
11 So the question is, is there extra money available
12 totaling some \$11 million that local government hasn't
13 provided receipts for? Do we have the answers to that?
14 Yes or no.

15 MR. CHANDLER: Maybe I can help you.
16 Judy, I'd like to you come and sit at the
17 chair. We've had a discussion about this and I think
18 it's important that you chime in.
19 You raise a very good point, and the point I
20 think you're raising, which is how long are we under a
21 program that has continuous appropriation are we going
22 to allow prior year grant recipients to continue to
23 have, if you will, eligibility to these dollars and
24 therefore make expenditures and, therefore,
25 encumbrances against those expenditures to this
26 account, or, perhaps more appropriately, should we have

1 some dates certain in which a cycle of awards are
2 given, and after a three-year period the cycle is
3 closed out and within 90 days they have to submit their
4 final report. Therefore freeing up those unallocated
5 dollars to then be distributed either pursuant to the
6 formula for the various programs or right back to that
7 same program. If we're talking demonstration grants,
8 the monies would go back into demonstration grants.
9 And I don't know if you want to have a discussion now
10 or, as Mr. Rhoads said, down the road, but I think it's
11 a very good policy discussion for the Board to consider
12 should we be putting a time limit on these grants so
13 that they are not left with an open-ended cycle to
• 14 continue to assume they can make encumbrances.

15 MEMBER EATON: Right. And I think that's --

16 MR. CHANDLER: And we don't have that right
17 now.

18 MEMBER EATON: We don't have that, and
19 that's where we want to go because we have those
20 additional funds out there. I mean, this is going back
21 to 92/93. That's five years, and it's local
22 government --

23 MR. DELMAGE: It's my understanding that
24 those earlier ones have already been disencumbered and
25 put back into the fund.

26 MEMBER EATON: Then why is it on our

1 commuter system?

2 MR. DELMAGE: I'm not sure about that.

3 MEMBER EATON: How about the all of the
4 others? 93/94, 94/95, 95/96. We have \$85,000 alone on
5 nonprofits outstanding that are at least three years
6 old. All I would like to do is find out what kinds of
7 monies we have available to us, and that we should not
8 act on the item until we find out for what the
9 recommendations are, and then see if we need to do a
10 separate process, and, therefore, we solve some of the
11 kinds of concerns that were raised by Shirley, if we're
12 allocating \$2.5 million or recommending the allocation
13 2.5, and my understanding is there were \$7 million in
14 requests. If my math serves me correctly that's
15 probably, that's probably what, 4.5 that remain
16 unfunded. According to my balance sheet we have
17 11,813,000 that somehow may still be out there, or
18 something about that.

19 MS. FISH: Board Member Eaton, Karin Fish.
20 We are continually going through those reports to
21 disencumber the old grants, and there could be as much
22 as 11 million out there outstanding, but I'm not sure
23 if the Board, because of the way they allocate the
24 funds according to statute, that they would want to
25 apply that much of this funding to this. Maybe a
26 portion would be allocated, but staff right now are

1 going through those reports, and every month we come up
2 with new balances.

3 I think Ralph alluded to a more fundamental
4 issue, that we have difficulty disencumbering the funds
5 if the grant is not closed, and we probably should
6 alter our process to become more effective in keeping
7 these grants more current in giving our grantees a time
8 line. But staff could work on that and come back with
9 a proposal to do that as well as available cash that
10 might be allocated for another purpose.

11 MEMBER EATON: Do you think we would be
12 injuring any of the programs, since some of the
13 programs begin late, that within 30 days we could get
14 some sort of sense of what monies might be -- have been
15 disencumbered or at least here so that we kind of work
16 from and grasp something for some of the individuals
17 that may or may not have been satisfied with our
18 process, and at the same time also provide some of the
19 other kinds of cures that we need to have with regard
20 to this? Because it's very disturbing. This is the
21 second or third time that we find these monies, and I
22 find it very hard to believe that local governments, at
23 a time when they're really strapped for cash, aren't
24 cashing in their chits to get money from the state. I
25 just -- it could be the case, but if it -- and if
26 they -- I have an old saying, if they snooze, they

1 lose. If they snore, they lose more. I think they
2 should lose.

3 MS. FRIEDMAN: If I may -

4 CHAIRMAN PENNINGTON: Mr. Frazee, did you
5 have -

6 MEMBER FRAZEE: Yes. I think there may be
7 some room to find some additional money, but
8 considering the fact that we already delayed this one a
9 month, I'd like to go ahead and fund these that are on
10 the approved list, and then recommend that staff
11 research the additional available funds and see if we
12 can pick up a few more down the list

13 CHAIRMAN PENNINGTON: Maybe what we can do
14 here is let's hear from the other two people in the
15 audience who wish to address us, and then we can look
16 at that

17 Susan Blueston

18 MS. BLUESTON: Thank you for this
19 opportunity. I'm Susan Blueston. I'm the executive
20 director of a small nonprofit in Oakland, the Oakland
21 Recycling Association.
22 We were the grant recipient twice in the
23 past of used oil programs, which we have been able to
24 do much multilingual outreach in a good partnership
25 with the City of Oakland. We did apply for this third
26 grant cycle, were turned down, were rather surprised,

1 although I understand there's not as much funds as
2 grantees this time.
3 I want to make it clear. We are not trying
4 to impede the process of what are now the 18
5 recommended for funding programs. We would not want to
6 do that. We've been on the other end of that one. We
7 did request our score sheet upon learning that we were
8 not recommended for funding, although we did not at any
9 time receive our score number. We did receive the
10 comments back. I appreciate the issues that are being
11 raised here in terms of changing your process and
12 having a lot more communication. I just want to bring
13 your attention to a few issues that we feel were just
14 lack of understanding in the way our proposal was
15 reviewed. Our proposal concerns outreach to
16 communities where the primary languages are Spanish and
17 Cantonese. I did consider having one of our staff
18 members who's here, Jorge Sanchez, doing this
19 presentation in Spanish to get the message across to
20 you how important it is when we're delivering a message
21 as important as the hazards of used motor oil in the
22 community that people receive the message in the
23 language that they understand.
24 So, you know, one of the questions on the
25 score sheet was why are we assuming that this is an
26 audience that needs to be reached? We've got lots of

1 documentation in terms of what the percentages are in
2 our city, and there was communication that there would
3 have been an opportunity to do that. Another comment
4 was it would be better -- it was stated in the score
5 sheet -- it would be better to have bill inserts in the
6 garbage recycling billing in our community in the city
7 of Oakland. Over 60 percent of the residents are
8 renters, so bill inserts would never reach the people
9 in the houses we're talking about. So we feel, again,
10 that's a communication lack that could have occurred.
11 The other thing we did find rather
12 surprising in the score sheet was that our personnel
13 costs were high. We work on a very lean budget, very
14 lean staff salaries. When you do outreach the cost is
15 human beings to do that outreach.
16 So we just feel, in the future, it would
17 really help this process if there could be better
18 communication. We think we have a legitimate grievance
19 in terms of this, but we don't want to impede your
20 process now.

21 CHAIRMAN PENNINGTON: Any questions of
22 Ms. Blueston?

23 Thank you. What is the amount that you were
24 seeking?

25 MS. BLUESTON: 200,000.

26 CHAIRMAN PENNINGTON: Thank you.

1 MS. BLUESTON: Thank you.

2 CHAIRMAN PENNINGTON: Now we have

3 Jennifer Stanley, the City of Oakland.

4 MS. STANLEY: Hello. I'm here to represent

5 the City of Oakland Public Works Agency, Environmental

6 Services Division, and our support for the Oakland

7 Recycling Association's program.

8 It's been a very key component of our effort

9 to outreach the people of Oakland, and they certainly

10 fill a void that the City on its own doesn't very

11 successfully all the time reach.

12 And I'd also like to say, regarding the bill

13 inserts, I don't think it was necessarily a lapse in

14 communication, but perhaps an assumption on the part of

15 staff that I personally feel was kind of erroneous to

16 recommend that bill inserts is a good way to reach

17 people. That was sort of, to my mind, just an

18 assumption that had actually no basis.

19 But anyway, the Oakland Recycling

20 Association has done excellent work, and the City of

21 Oakland has been very grateful that the Board has given

22 them the wherewithal to work for the residents of

23 Oakland. Thank you.

24 CHAIRMAN PENNINGTON: Any questions of

25 Ms. Stanley.

26 MEMBER JONES: I have a question.

1 CHAIRMAN PENNINGTON: Yes, Mr. Jones.

2 MEMBER JONES: This has been a good program.

3 Does the City of Oakland want to keep this program

4 going and fund part of it with its own money?

5 MS. STANLEY: Yes. As a matter of fact, we

6 do have a forth cycle opportunity grant that was

7 basically to do oil recycling kit distribution, but

8 based on the results of this nonprofit grant cycle, we

9 were going to attempt to relook at that budget a little

10 bit to do the kit distribution, to do some outreach as

11 well, because that's a very, very important component.

12 MEMBER JONES: We gave you money to buy

13 kits.

14 MS. STANLEY: Yeah.

15 MEMBER JONES: And now you're going to use

16 it for this?

17 MS. STANLEY: Well --

18 MEMBER JONES: That ain't going to work.

19 That ain't going to work.

20 MS. STANLEY: Well, I mean just to hand out

21 kits without doing outreach has a limited impact. I

22 was going to work with my grant manager to look at that

23 budget again.

24 MEMBER JONES: I guess what I meant when I

25 said the City of Oakland, I kind of meant out of the

26 the City of Oakland's coffers, not other grants that we

1 were giving to the City of Oakland.

2 MS. WILLD-WAGNER: There is also a local
3 government block grant amounts, which do not include
4 any kind of budget approval ahead of time. Anything
5 that the City feels meets their needs that's a priority
6 that's eligible for a used oil recycling program can be
7 spent.

8 MEMBER JONES: So they can use that on this.

9 MS. WILLD-WAGNER: So there is no budget.
10 We didn't give them money, for instance --

11 MEMBER JONES: Oh, okay.

12 MS. WILLD-WAGNER: -- for kits. They would
13 have to change that. That's a good point.

14 MEMBER JONES: That was just their internal
15 plan.

16 MS. WILLD-WAGNER: And that's 464,000 plus a
17 year, so they could use that for this.

18 MEMBER JONES: Okay.

19 MEMBER EATON: If I could just ask one
20 question of the witness?

21 CHAIRMAN PENNINGTON: Mr. Eaton.

22 MEMBER EATON: My understanding is, the city
23 of Oakland is a city made up of minorities; is that
24 correct?

25 MS. STANLEY: Yes, it is.

26 MEMBER EATON: And that the majority of

1 residents in the city of Oakland are minorities;

2 correct?

3 MS. STANLEY: That is correct.

4 MEMBER EATON: And my understanding is that

5 one of the comments made by our staff in evaluation is

6 that we did not -- that you did not provide any

7 information with regard to whether or not the targeted

8 populations of minorities would be targeted; is that

9 correct?

10 MS. STANLEY: That was a complaint about

11 Jorge's application.

12 CHAIRMAN PENNINGTON: Okay.

13 MEMBER JONES: Mr. Chairman?

14 MEMBER EATON: I think common sense tells

15 you that if it's a city of minorities, then it's

16 targeted to the minority population.

17 MS. WILLD-WAGNER: That could be, but,

18 again, we judge only on what's provided in the

19 application, and they did not specifically list what

20 their demographics are within that population that they

21 were going to be targeting, and in staff's -- when they

22 reviewed it, they did not find that information, and we

23 only judge on what's in the packet.

24 CHAIRMAN PENNINGTON: They could be

25 minorities that are English speaking minorities?

26 MS. WILLD-WAGNER: That are not -- yes,

1 Latino populations other than that. Some communities
2 have large minority populations that have other
3 language needs rather than the Spanish translation.

4 MEMBER JONES: Mr. Chairman?

5 CHAIRMAN PENNINGTON: Mr. Jones.

6 MEMBER JONES: You know, I -- first off, I
7 want to commend staff for taking this Board's
8 suggestion the last time around when we said, "Don't be
9 so arbitrary. Don't have just one committee looking at
10 this thing," because based on who's on that committee
11 determines whose preferences come through, so by taking
12 and sitting down, you know, or giving it to another
13 group to review and coming up with the same number
14 gives me more assurance that the process probably
15 works.

16 The other thing that's important to me is
17 that we have a minimum score of 70, and I don't want to
18 see that number change personally. I mean, I think it
19 is very critical that we have a minimum standard. We
20 seem to keep dropping standards, and I don't want to
21 see this one dropped. I mean, 70 is reasonable.

22 People have to understand when they write grants that
23 they need to be completely -- they have to give more
24 information than anybody would ever need to assure that
25 there was no confusion. I don't know who on the list
26 you want to take off. Everybody that had a 70 or above

1 got funded; right?

2 MS. WILLD-WAGNER: Correct.

3 MEMBER JONES: I don't have a problem with
4 this, because, you know, the spinners that -- you know,
5 if you guys could come up with a process and bring it
6 to this Board where we could all have some, you know,
7 input into what makes sense, then I don't have a
8 problem with that for further down the road, but I
9 think open communication, while it's important, also is
10 a real opportunity for somebody that figures out that
11 they blew it, that they put the wrong staff person on
12 this, or that they just didn't get it, to change the
13 work in the last minute, and I think your work has to
14 stand on its own the day that you ring the bell. Ring
15 the bell, and then live with it, because that's what
16 life in the big city's is about. You know, you do your
17 job and you do it right, and you live with who the
18 judges are.

19 So Mr. Frazee had made a suggestion and that
20 we move this thing forward. I don't know if that was a
21 motion, but I'll move Resolution 98-286, to award the
22 1998/99 Used Oil Nonprofit Grant Awards.

23 MEMBER FRAZEE: I'll second it.

24 CHAIRMAN PENNINGTON: Okay. It's been moved
25 by Mr. Jones, seconded by Mr. Frazee. If there's any
26 further discussion.

1 MEMBER FRAZEE: Just a comment.

2 CHAIRMAN PENNINGTON: Sure.

3 MEMBER FRAZEE: I think Mr. Jones raises a
4 good point. We went through all this last time around
5 and sent staff back to devise a better system, and this
6 is a markedly better system, and I think we paid our
7 money, and this is what we got, and I think we ought to
8 fund this level, and if we can find some other money to
9 move the program down a notch or, two that's all fine,
10 but I think these people deserve to be funded in a
11 timely manner.

12 CHAIRMAN PENNINGTON: Okay. If there's no
13 further discussion, will the secretary call the roll.

14 THE SECRETARY: Board Member Eaton.

15 MEMBER EATON: No.

16 THE SECRETARY: Frazee.

17 MEMBER FRAZEE: Aye.

18 THE SECRETARY: Jones.

19 MEMBER JONES: Aye.

20 THE SECRETARY: Rhoads.

21 MEMBER RHOADS: Aye.

22 THE SECRETARY: Chairman Pennington?

23 CHAIRMAN PENNINGTON: Aye. Motion carries.

24 We'll move to --

25 MR. CHANDLER: Mr. Chairman?

26 CHAIRMAN PENNINGTON: Mr. Chandler.

1 MR. CHANDLER: Carl ask for some clarity --

2 CHAIRMAN PENNINGTON: Sure.

3 MR. CHANDLER: -- given that you've taken
4 that action? I think we did have a discussion that did
5 point out some possible areas that staff could come
6 back with some more clarity. I heard a discussion that
7 talked about is it appropriate to have a time certain
8 duration to the length of time that these grants are
9 allowed to be opened.

10 Would you like to have us come back with a
11 proposal for all future grants, and I would also add,
12 do you want to consider in the awards you just gave
13 putting a three-year duration to the amount of -- this
14 is a continuously appropriated fund, and perhaps I'm
15 getting ahead of myself here, but I think there should
16 be some consideration on how long we allow these grants
17 to be open.

18 CHAIRMAN PENNINGTON: I think that's an
19 excellent idea. I think the Board would be happy to
20 hear your recommendation.

21 MR. CHANDLER: All right. We will do that,
22 and we will make it --

23 CHAIRMAN PENNINGTON: These grants are
24 two-year grants now; right?

25 MS. WILLD-WAGNER: Yes.

26 MR. CHANDLER: And if you'd like to do that

1 now, I'd like to see the Board make a -- consider
2 taking up a motion to make it time certain that these
3 grants that you just awarded are typical to our other
4 contracts, three years in duration. We would then ask
5 for a 90-day -- within 90 days a final report to be
6 submitted, and then the grant is closed out, and those
7 funds could then come back to the Board for
8 reconsideration to be applied in either this existing
9 program or spread across our block grants and our RND
10 grants and our other activities. We will come back
11 with a process on how to do that, but I think we need
12 to come back with some recommendations on time specific
13 requirements.

14 CHAIRMAN PENNINGTON: I think we all agree
15 that we'd like to have you come back with the
16 recommendations.

17 I have to ask legal counsel whether we can
18 vote to change these things without noticing it.

19 MS. TOBIAS: I don't think it's so much an
20 issue of notice. I think the parties have been on
21 notice that there is an agenda item being heard today.
22 My concern's actually the larger one, which
23 is that if you don't put on a limit today, then I don't
24 know how -- then I think to a certain extent they are
25 going to have to wait till the next meeting for us to
26 come back, and we will not be able to send those grants

1 out unless Judy has a different approach, but I'm a
2 little concerned with them not having that notice as
3 the grants are issued.

4 MS. FRIEDMAN: I do want to clarify
5 something. The notice indicates that these are
6 two-year grants.

7 MS. TOBIAS: Okay.

8 MS. FRIEDMAN: So if we did this, it would
9 be a two-year grant with a one-year, you know, grace
10 period, which is typically -- you know, if you're
11 talking about contracts you end up being able to extend
12 timewise out to three years.

13 The thing that I wanted to clarify earlier
14 is that typically that's how these grants run, and if
15 they need more time, they come in and ask for the
16 extension. So I just want to clarify that, if that's
17 where the Board's going, that would be consistent --

18 MS. TOBIAS: You mean, they've asked for a
19 one-year extension on top of the two-year program?

20 MS. FRIEDMAN: At times. It just depends on
21 what the actual time extension. It varies.

22 MS. TOBIAS: So, I think, what the Board's
23 clarifying here today, that if your announcement says
24 two years with a one-year extension that that's what it
25 is, that there's no further extensions on top of that,
26 and that we're coming back with a Board agenda item to

1 talk about what we're going to do with the previous
2 grants that do not have that certainty with them.

3 MS. FRIEDMAN: Right. We would develop
4 policy discussion around that item.

5 MEMBER JONES: So that was part of the NOFA
6 anyway.

7 MS. WILLD-WAGNER: That's correct.

8 CHAIRMAN PENNINGTON: Mr. Frazee would
9 like --

10 MEMBER FRAZEE: I'd just want to clarify.
11 It is specific that these grants that we just approved
12 are for a two-year funding period, plus a one-year, at
13 the end of that two year period, a one-year grace
14 period, if you will.

15 MS. WILLD-WAGNER: No. The notice -- This
16 is a little bit confusing. The notice actually says in
17 the application that these grants do expire, and all
18 expenditures must be incurred by September 30th, 2000,
19 and that the final report is due September 13, 2000.
20 Staff has -- because the funds are
21 continuously appropriated -- staff does -- and this is
22 more of an internal procedure -- approved, with certain
23 justification, extensions of six months or one year for
24 any ongoing program if there was some circumstances
25 beyond the control of the grantee, but they have to
26 write to us to justify that extension.

1 So that's --

2 MEMBER FRAZEE: Previous grants did not have
3 that?

4 MS. WILLD-WAGNER: Yes, all grants have
5 always had that.

6 MEMBER FRAZEE: All grants.

7 MS. WILLD-WAGNER: They've always been
8 noticed that they're a two-year project period, and if
9 there's an extension that they are -- and that is how
10 the administration division then takes those grants
11 that have been expired, where the actual period has
12 generally been expired, whether or not they've been
13 extended, and then disencumbers those funds that are
14 remaining on those other projects, and that's how a
15 disencumbrance occurs.

16 CHAIRMAN PENNINGTON: So the funds that
17 Mr. Eaton has identified now are longer than the two
18 years?

19 MEMBER EATON: Or any extension granted
20 thereof.

21 MS. WILLD-WAGNER: I think that that's what
22 we need to work on, finding out exactly what those are,
23 because they may -- some of them may be. Some of them
24 may be some other scenarios.

25 CHAIRMAN PENNINGTON: Okay.

26 MEMBER JONES: Mr. Chairman?

1 CHAIRMAN PENNINGTON: Yes, Mr. Jones.

2 MEMBER JONES: That request of Mr. Eaton's,
3 though, I think we need to do --

4 CHAIRMAN PENNINGTON: Oh, absolutely.

5 MEMBER EATON: -- I think the applicant
6 needs to come forward by whatever date you guys came up
7 with, because I think that's critical.

8 CHAIRMAN PENNINGTON: Okay. What's your
9 pleasure?

10 MR. RHOADS: I'd like to just have a
11 verification on what that request is. That request is
12 to find the additional funds that might be available
13 for expenditures? Is that what --

14 MR. CHANDLER: Mr. Rhoads, what I would
15 propose is that we take all four categories of this
16 program. I think we have demonstration grants, RND
17 grants, block grants, nonprofit grants -- I may be
18 missing one -- and give you a full accounting of where
19 the dollars are with respect to what has gone in effect
20 past due, and perhaps those that are so long in
21 duration but due to staff's extensions that perhaps
22 have been given, and so we can truly get a full
23 accounting as to what dollars are available. Then I
24 think we ought to have a discussion, do you want to
25 simply let those dollars remain in that particular
26 category, or do you want to pool the money and apply it

1 to, say, this program, the nonprofit grants, or only
2 take nonprofit grants that have been past due and apply
3 those overages, if you will -- those savings.
4 So we will bring that back to you on all
5 four category areas as to what we see the available
6 dollars to be in January. I'd like to do it in
7 January. It would give us a good chance, 'cause we
8 have to notify these folks who are now perhaps
9 operating under the assumption that continuously
10 appropriated, we're just narrowly moving along, and
11 we're going to perhaps indicate, date certain, they need
12 to get a final report in, and perhaps hear from them
13 what the implications of that kind of decision would be
14 on their programs

15 MEMBER RHOADS: That's very good. I think
16 that's exactly what the Board would like to take a look
17 at.
18 I'd also like a little cash flow projection these accounts
19 also.

20 MR. CHANDLER: And then at that point you
21 can decide what, perhaps legally, you can do with
22 regard to taking those available dollars and then
23 applying them to a program at a minimum score of 70.
24 If you want to pool it over to the future year or
25 somehow renote these grants to be reconsidered for
26 additional funding with the dollars that we identify in

1 January. That's a whole other discussion for that
2 time.

3 MR. FICKAS: Mr. Chairman, just a
4 clarification.

5 I don't know if Mr. Jones is alluding to
6 Mr. Eaton that we would bring up an action item now for
7 a vote or a motion that in the next 30 days we could
8 find out what the cash flow is. I mean, is there a
9 time that we're looking at so I can go back and report?
10 There was four, I think, programs that had points.
11 They missed it by one point.

12 CHAIRMAN PENNINGTON: Yes, January.

13 MR. FICKAS: They may want to know --

14 CHAIRMAN PENNINGTON: January.

15 MR. FICKAS: Okay. So you'll know by
16 January if there's even a little bit extra money?

17 CHAIRMAN PENNINGTON: Correct.

18 MR. FICKAS: Okay.

19 CHAIRMAN PENNINGTON: We've got to go
20 through -- there will be a Board discussion at that
21 point.

22 MR. FICKAS: Okay.

23 CHAIRMAN PENNINGTON: There won't be a Board
24 decision --

25 MR. FICKAS: That's probably when the
26 agency's board budget ends.

1 CHAIRMAN PENNINGTON: There won't be a
2 decision as to allocate to allocate those funds
3 until --

4 MR. FICKAS: January.

5 CHAIRMAN PENNINGTON: Right. We've got to
6 see what we have. Then we'll decide what we're going
7 to do with it.

8 MR. FICKAS: I was just wondering what the
9 time frame was. That's all.

10 CHAIRMAN PENNINGTON: Anybody want to move a
11 motion on the three-year?

12 MEMBER FRAZEE: I think that's --

13 MR. CHANDLER: It sounds like that's
14 actually been built into the NOFA.

15 CHAIRMAN PENNINGTON: Okay.

16 MEMBER JONES: Mr. Chairman, just appoint of
17 clarification.

18 CHAIRMAN PENNINGTON: Yes.

19 MEMBER JONES: The accounting part, we're
20 looking at January. The other discussions that we had
21 about the policy around interaction and those types of
22 things, are we going to look at that discussion
23 sometime prior to January? That's more on this part.

24 I just want to know because --

25 MS. FRIEDMAN: Maybe I can summarize.

26 What you're asking about is your discussion

1 about the process and criteria.

2 MEMBER JONES: Right.

3 MS. FRIEDMAN: Did you want to have that
4 come back prior to January. That also has implications
5 for, you know, all the grant programs. So I think
6 Ms. Fish might want to weigh in on that as well,
7 because there's, you know, commonalities between all
8 the grant programs that you need to look at. This
9 general criteria that is set by grant's administration
10 and works with the Board on that.

11 MR. CHANDLER: Judy, I don't think he was
12 speaking so much of changing the criteria, but opening
13 up the process to be one more of a two-way dialogue
14 where there's more communication on staff's initial
15 announcement, initial evaluation.

16 MS. FRIEDMAN: I understand that, but the
17 process and the criteria are set at the same time.
18 That's all I'm thinking about.

19 CHAIRMAN PENNINGTON: Why don't we let the
20 staff and the staff director work this out, and let's
21 say we would like to have something back no later than
22 December. I think we're only having one Board meeting
23 in December; is that correct?

24 MR. CHANDLER: On both the accounting and --

25 CHAIRMAN PENNINGTON: No, no. The
26 accounting we're going to do in January, but the review

1 of the policies and procedures, could we do that by the
2 December meeting?

3 MR. CHANDLER: We'll take a run at that.

4 CHAIRMAN PENNINGTON: If you can't, just
5 tell us. It at least gives us a target to shoot at.

6 MR. CHANDLER: I think it's important --
7 excuse me, I'm sorry. I don't know your name, the
8 gentleman that spoke earlier

9 MR. FICKAS: Paul Fickas

10 MR. CHANDLER: Mr. Fickas. What I wanted to
11 make sure -- I know you're concerned about being able
12 to go back and report to your Board on the results
13 today. I don't know if you were in rank 68 or 69.

14 MR. FICKAS: 69

15 MR. CHANDLER: 69. All right. I understand
16 there's five proposals that are in rank 69. Most
17 proposals total \$770,000, so what the Board is
18 entertaining potentially here is getting an accounting
19 in January on what available dollars are potentially
20 available. Then they have to make a discussion, a
21 policy call, whether or not they want to apply those
22 dollars to these programs and reach below 70, which I
23 think we have some issue with potentially, and then
24 apply those dollars to those applicants that may be
25 eligible for award in rank 69, again, which total
26 \$770,000. So what you'll get in January is more of

1 just an accounting of where the dollars are, but we
2 will not be in a position in January -- at least I'm
3 not recommending that staff come forward and provide
4 this Board with a recommendation on what you do with
5 that accounting. You'll have to give us some direction
6 if you want to carry it over to the future, then that's
7 where we'll apply it.

8 CHAIRMAN PENNINGTON: I don't think that's
9 the intent of the Board. The intent of the Board is to
10 have an accounting of the cash flow.

11 MR. CHANDLER: I just want to make sure he
12 was not letting his board know that he would have an
13 answer in January whether or not he's getting funding.
14 At this point we'll just be giving the Board an
15 accounting.

16 MR. FICKAS: I was curious of the time
17 frame. That's what I was curious about.

18 MR. CHANDLER: That's what I thought you
19 were, so I just wanted to clarify that for you.

20 MEMBER FRAZEE: Just one thought --

21 CHAIRMAN PENNINGTON: Yes, Mr. Frazee.

22 MEMBER FRAZEE: -- Mr. Chairman, on the
23 policy issue of how these are handled, and I would
24 offer that perhaps something that's akin to the
25 bidders' conference in a construction bid, there might
26 be an additional step that would help this along where

1 everyone would have an opportunity to ask questions or
2 to be instructed on what the process is, and that might
3 level the playing field somewhat, or all the bidders
4 and take away that lack of sophistication that might be
5 there on the part of some very viable bidders.

6 MR. CHANDLER: We will come back in the
7 December with the review of our procedures and take
8 that suggestion in account when we lay out how we can
9 continue to improve the process, and we will be back in
10 January of next year with an accounting on those grants
11 that are well past due for grants and are now in need
12 of the notification of the program is -- their program
13 needs to wrap up the report, get an accounting.

14 CHAIRMAN PENNINGTON: I agree with
15 Mr. Frazee. I know that when I was at the Department
16 of Housing when we would have a money release, we would
17 have prior to that the application. We'd go through
18 the application and explain what we were looking for
19 and that sort of thing.

20 Okay. I think we can move on to --

21 MEMBER EATON: Mr. Chair, is the accounting
22 going to just cover the four or five grants that are in
23 Ms. Friedman's department, or is it going to be also,
24 because on this grant cycle sheet there are many, many
25 outstanding balances. So are we going to
26 systematically -- I understand that --

1 MS. FISH: It's going to cover everything.

2 MEMBER EATON: Cover everything. So that
3 would include --

4 MS. FISH: Look at all the encumbrances.

5 MEMBER EATON: -- the tire funds, which have
6 some additional -- I mean, I'm just talking, now when
7 you say "all," I mean I look at all --

8 MS. FISH: Now wait a minute.

9 MEMBER EATON: 'Cause I got \$324,000 from
10 tire recycling grants from 92/93. That seems to be
11 somewhere around five or six years old. So, I mean, I
12 understand that --

13 CHAIRMAN PENNINGTON: Mr. Eaton.

14 MEMBER EATON: -- I would accept that if you
15 go through and do the four or five grant areas
16 initially, but I want it understood that it shouldn't
17 stop here, that there are other kinds of balances
18 available, and we should look at, because everyone is
19 looking for dollars.

20 CHAIRMAN PENNINGTON: I think what we want
21 to do, particularly in the tire area, is to keep that
22 separate, and let's look at what we have there so that
23 when we do go to the Department of Finance, we can wrap
24 all of this stuff into one package and make sure we
25 have enough authorization to spend whatever it is we
26 can find, and then I think she's --

1 MEMBER EATON: But that also involves
2 Section 27 letters, which go through Mr. Chaney.

3 CHAIRMAN PENNINGTON: I'm not sure what that
4 has to do with it, but anyway.

5 MR. CHANDLER: Let me recommend that we will
6 come back in January on the Used Oil program, and as
7 part of our Section 27 process, that we'll be
8 initiating sooner than January, we will be going
9 through that process of doing an accounting of what
10 available dollars are there in that program to tie with
11 the Section 27 request.

12 CHAIRMAN PENNINGTON: Okay. We will now
13 move on to Continued Business Item B.

14 CONTINUED BUSINESS ITEM B

15 CHAIRMAN PENNINGTON: Consideration Approval
16 of Contract Concept Number 48 for the C & D Ordinances
17 Under the Discretionary Consulting and Professional
18 Services for fiscal year 98/99.
19 Ms. Trgovich.

20 MS. TRGOVICH: Good morning, Chairman
21 Pennington and members. I will be very brief in this
22 presentation.
23 This item was held over originally from the
24 Board's approval of Contract Concepts on
25 September 17th. It was held over principally for one
26 reason, and that was to determine the outcome of

1 whether or not the governor was going to sign the Bowen
2 bill which looked at green building issues and directed
3 the Board to develop regulations in certain areas.
4 That bill was not signed, and so we are back
5 before you today seeking approval for Contract Concept
6 Number 48 for \$50,000 to look at the issue of
7 ordinances, local ordinances, to look at their costs
8 and implementation issues affecting construction and
9 demolition debris recycling.

10 CHAIRMAN PENNINGTON: Okay. Any discussion
11 on this?

12 MEMBER FRAZEE: If not, Mr. Chairman, I
13 would move adoption of Resolution 98-353.

14 MEMBER EATON: Isn't this really a data
15 search?

16 MS. TRGOVICH: No, this will be --

17 MEMBER EATON: This is a \$50,000 contract?

18 MS. TRGOVICH: Correct.

19 CHAIRMAN PENNINGTON: Mr. Eaton, can we hold
20 on for just a minute and let's see if we get a second
21 to the

22 MEMBER EATON: Well, I think that you'd
23 extend me the courtesy to ask some questions.

24 CHAIRMAN PENNINGTON: Certainly. It's just
25 there's not a full motion.

26 MEMBER EATON: If there's a second, under

1 procedure, before you make the second I should be
2 entitled to ask a few questions. It may influence
3 whether or not you get a second.

4 MEMBER FRAZEE: That's a new one.

5 CHAIRMAN PENNINGTON: Yeah, that's a new
6 wrinkle to me, and I'll second this, so now we have it,
7 and go ahead, Mr. Eaton.

8 MS. TOBIAS: Actually, generally speaking,
9 the procedure we moved on is that there needs to be a
10 motion on the floor to have that kind of discussion.

11 CHAIRMAN PENNINGTON: I'll second it.
12 So then, Mr. Eaton, if you have some
13 discussion, we'll be glad to hear it.

14 MEMBER EATON: Isn't this really part of
15 Contract Concept Number 3, 49, and 52?

16 MS. TRGOVICH: Could you repeat the Contract
17 Concepts number?

18 MEMBER EATON: 3, 49, and 52.

19 MS. TRGOVICH: The Concept Number 3 is the
20 technical assistance focussing on the two selected
21 regions under Goal 1 of the C & D Action Plan. These
22 two regions will be one from Northern California and
23 one from Southern California, and the funds will be
24 providing targeted assistance.
25 Concept Number 45 is specifically training
26 on contractors and developers in the state of

1 California.

2 51 was not approved.

3 52 is a deconstruction training program

4 focusing on the small contractor. This concept,

5 Number 48, is targeted out initially doing a survey of

6 all local jurisdictions to determine the existence of

7 ordinances, evaluating those ordinances. Then

8 evaluating cost for implementation and results, the

9 outcome. So then going in and trying to determine

10 specific information around tonnages diverted, ease of

11 recycling, removal of barriers. So it is not a data

12 search.

13 MEMBER EATON: But couldn't those be

14 incorporated into those other contract concepts?

15 MS. TRGOVICH: I do not believe they could.

16 We would be looking at a very different contractor

17 here. The other contracts are principally focused at

18 training, and Concept Number 3 is targeted at the two

19 jurisdictions. Those jurisdictions will make the

20 specific request.

21 MEMBER EATON: Are we looking at green

22 building codes, or are we looking at building

23 ordinances?

24 MS. TRGOVICH: We are looking at building

25 ordinances. We are looking at one building ordinance,

26 but also other ordinances that the local jurisdiction

1 may have, which would affect construction and
2 demolition debris recycling at the job site, off the
3 job site, or other types of handling ordinances.

4 CHAIRMAN PENNINGTON: Mr. Frazee.

5 MEMBER FRAZEE: Would this not be one of the
6 principle end results of this, the development of a
7 model C & D ordinance?

8 MS. TRGOVICH: Or multiple models, depending
9 upon the outcome.

10 MEMBER FRAZEE: That could be adopted by
11 local governments.

12 MS. TRGOVICH: Correct.

13 MR. FRAZEE: So the typical bidder on this
14 might be the local government based agents and --

15 MS. TOBIAS: A planning type consultant.

16 MS. TRGOVICH: A planning consultant. Other
17 consultants in the demolition debris field, potentially
18 nonprofits. There have been a number of nonprofits
19 that have done significant work in this area as well.

20 CHAIRMAN PENNINGTON: Any further discussion
21 on this motion?

22 If not, I'll ask the secretary to call the
23 roll.

24 THE SECRETARY: Board Member Eaton.

25 MEMBER EATON: Aye.

26 THE SECRETARY: Frazee.

1 MEMBER FRAZEE: Aye.
2 THE SECRETARY: Jones.
3 MEMBER JONES: Aye.
4 THE SECRETARY: Rhoads.
5 MEMBER RHOADS: Aye.
6 THE SECRETARY: Chairman Pennington.
7 CHAIRMAN PENNINGTON: Aye. Motion carries.
8 We'll move to Continued Businesses Item
9 Number C.
10 CONTINUED BUSINESS ITEM C
11 CHAIRMAN PENNINGTON: This is Consideration
12 of the Analysis of Enterprise Zone Incentives as they
13 Relate to Recycling Market Development Zone Programs
14 Division Goals.
15 Caren Trgovich.
16 MS. TRGOVICH: Good morning, again,
17 Chairman Pennington and members.
18 This item was carried over from the last
19 meeting, and it is a result of the Board's approval
20 last January of a variety of incentives that our
21 recycling market development zone administrators had
22 sought from the Board.
23 Included in that January package were a
24 listing of incentives requested by the zone
25 administrators that we believe would require statutory
26 revision, either within our codes or codes of other

1 agencies currently offering the incentives.
2 John Smith will provide a very brief
3 overview of the seven incentives that are included here
4 today. I would like to remind you that this is a
5 consideration item, and that approval of any one of
6 these seven concepts would then precipitate the
7 development of a legislative concept.

8 CHAIRMAN PENNINGTON: Questions of staff?

9 MS. TRGOVICH: John is going to briefly
10 describe the seven incentives for you.

11 CHAIRMAN PENNINGTON: Oh, I'm sorry.

12 MR. SMITH: Mr. Chairman, Board members,
13 good morning.

14 I'd like to start with the -- go over the
15 seven incentives, and these are now offered to
16 enterprise zones, and the idea here is to take those
17 incentives and apply them to the recycling market
18 development zones not covered by enterprise zones, and
19 about half of our recycling market development zones
20 now also are enterprise zones.

21 The seven incentives are, one is a hiring
22 tax credit for businesses if they hire certain
23 predetermined classifications.

24 The second is a sales and used credit for
25 businesses who purchase qualified machinery.

26 The third is a business expense deduction

1 for tangible personal property.

2 The fourth is a net operating loss deduction that
3 can be applied to the state income tax over a
4 period of 15 years, if it takes to the take care of
5 that loss.

6 The fifth is a net deduction of interest to
7 banks lending to businesses in enterprise zones.

8 The sixth is an employee tax credit. So
9 employees that are -- qualified employees that are
10 working in enterprise zones are allowed to take this
11 credit on their personal income tax.

12 And then the last incentive we looked at is a bidding
13 preference for state contracts for those businesses
14 within enterprise zones.

15 In analyzing all seven, we found that five
16 of them, the first five directly -- could directly
17 result in promoting recycling businesses in these zones
18 and would lead to increased diversion. The reason why
19 we say that is, all five of these reduce the tax
20 liabilities and provide additional funds for expansion
21 activity.

22 The last two are the employee tax credit. The history
23 with this credit is the fact it hasn't been used, and
24 it would not directly relate to businesses. The bidding
25 preference didn't provide a direct
26 relationship to increased diversion.

1 In looking at the possible costs of this --
2 of these incentives, we've looked at the costs that
3 have been developed by trade and commerce for the
4 enterprise zone program. Based on that, we found that
5 to implement this proposal it would be approximately --
6 there would be approximately a \$20 million reduction in
7 state revenues -- state tax revenues. Also for the
8 Board to administer the program, it would take
9 approximately 1.5 PY and cost approximately \$135,000 to
10 implement.

11 At this time staff has no recommendation
12 regarding these incentives, and we're looking to your
13 input regarding that.

14 Are there any questions?

15 CHAIRMAN PENNINGTON: We all understand it
16 totally, I guess, or we're totally confused.

17 MR. SMITH: I'll go over it again, if you'd
18 like.

19 MS. TRGOVICH: I think what's important to
20 point out with respect to the first four, or first five
21 incentives, those pertaining to the enterprise zones,
22 is that currently right now the RMDZ's, about half of
23 them are within enterprise zones and half of them are
24 not, and so when we look at the cost of this program,
25 our numbers are derived from the additional cost for
26 expanding either the zones, or expanding the authority

1 into the program, which would then take on the
2 additional 50 percent of our zones that cannot
3 currently take advantage of those additional
4 incentives.

5 CHAIRMAN PENNINGTON: Are those that are in
6 the enterprise zones now, are they accessing those
7 incentives?

8 MS. TRGOVICH: They could potentially access
9 the incentives, correct.

10 CHAIRMAN PENNINGTON: We don't know when
11 they are or not, do we?

12 MR. SMITH: No, we don't.

13 CHAIRMAN PENNINGTON: We don't know what
14 impact this has on those businesses?

15 MR. SMITH: On the current RMDZ's using
16 those, no we didn't do that.

17 CHAIRMAN PENNINGTON: Mr. Frazee.

18 MEMBER FRAZEE: This is a difficulty issue.
19 On the face they all sound like good ideas, and if
20 they're such good ideas we ought to just expand them
21 across the entire universe of businesses and make it
22 work.

23 CHAIRMAN PENNINGTON: I was hoping we could
24 move the office into the employee tax credit.

25 MEMBER FRAZEE: Yeah, right. I remember the
26 trauma that we went through in the legislature in

1 establishing enterprise zones, and that got to be
2 political. It was a trade for trade. Our MDZ zones
3 are much broader and the ability to expand those is
4 much easier. It doesn't take all of the legislative
5 action. This is a little like my experience in public
6 transit, where there was always a human cry for reduced
7 rates for every category of rider, and there wasn't
8 anybody left to pay the operational costs give
9 discounts for senior citizens and school children and
10 the whole range of people, and that covered everyone
11 that rode the bus, and so there wasn't anyone left to
12 pay the bill, and that's sort of my problem with this,
13 that, you know, they're all good ideas, but they ought
14 to be spread fairly and evenly, and while they may work
15 to achieve some of the goals that we have with
16 implementing 939, they're not necessarily fair to
17 society in general.
18 So I would just be in favor of letting the
19 issue drop.

20 MEMBER JONES: Mr. Chairman?

21 CHAIRMAN PENNINGTON: Mr. Jones.

22 MEMBER JONES: I'm glad Mr. Frazee is here
23 at times like this, 'cause I -- it was my gut feeling
24 on parts of these. I do have a question though.
25 On Item Number 7, you guys -- your thing
26 says it's not apt to increase diversion. I don't -- if

1 we didn't do this, what would it take to do some type
2 of a legislative proposal to look at some benefits to
3 those materials made with --

4 (Brief interruption.)

5 (Whereupon, a break was taken.)

6 CHAIRMAN PENNINGTON: Okay. Come back to
7 order here.

8 I think we took this break right in
9 midsentence of Mr. Jones.

10 Mr. Jones.

11 MEMBER JONES: Sorry. Sorry, Mr. Chairman.

12 CHAIRMAN PENNINGTON: I thought we cut you
13 off. You were in midsentence when we ran out of paper
14 and decided to take a smoke break.

15 MEMBER JONES: The question was answered
16 actually during the break, but for the benefit, down at
17 Echo Marketplace, whatever it was in L.A. -- what was
18 it?

19 MS. TRGOVICH: ECO Expo.

20 MEMBER JONES: ECO Expo. We were stopped by
21 people that make pillars, pilings, things like that,
22 out of 100 percent post-consumer plastic and these were
23 California using California plastic, and they were
24 concerned that there was no price preference and that
25 they were going to use bids to people from outside of
26 California that could -- you know, because of

1 incentives within their states had an advantage over
2 some of these California businesses.
3 So my question was going to be, you know,
4 how could we develop some type of rational, either
5 through funding on our level where we could make up a
6 difference to another agency, or something that we
7 could get California post-consumer material into our
8 uses within the infrastructure in California?

9 MS. TRGOVICH: I think there's probably two
10 approaches to answer your question.
11 The first one has to do with a price
12 preference that was in place in our law up until just a
13 few years ago. That price preference was available to
14 other state agencies taking advantage of products using
15 recycled content. What we found with that price
16 preference was that it was not accessed by other
17 agencies, although they were very aware of it, and that
18 money was actually disencumbered, moved several years
19 ago. It is something we can look at again, but what I
20 will say is it did not generate any interest on the
21 part of other agencies, and that would have provided an
22 incentive to the agencies to procure products made from
23 recycled content, such as from the individual
24 manufacturing the pillars that you represented or that
25 you discussed.
26 The other approach is one that's been much

1 more contentious here in this state, and that is
2 providing not just preferences, but more of a
3 procurement direction to agencies to direct their
4 attentions to specific products containing recycled
5 content, so that in lieu of providing them with a
6 monetary incentive, they are provided with a directive
7 to procure these products.

8 There are several orders in place. There's
9 currently no mandatory requirement along those lines.
10 What we find is there are agency discussion.
11 Therefore, department of General Services which made
12 calls on their own on whether or not these specific
13 products meet producing a product, that's being
14 procured by a subentity under General Services. The
15 first time around their product was denied under
16 contract, because it was not made of equal quality. We
17 participated in the resolution on that protest, and it
18 was resolved in the company's favor, and they've since
19 been denied on a subsequent contract with a different
20 subentity, and so we are now getting involved in that
21 second protest.

22 So there's a number of approaches. The
23 price preference approach we haven't found successful
24 in the past.

25 MEMBER JONES: Okay.

26 CHAIRMAN PENNINGTON: Mr. Frazee.

1 MEMBER FRAZEE: Mr. Jones' question went, I
2 think, a step beyond that. In the example that he gave
3 was the California preference, and I think therein lies
4 the problem because you run head-on into the commerce
5 clause. We found in the legislature there was almost
6 annually a bill to require preference for California
7 contractors. That may have avoided the commerce
8 clause, but the problem it created was that more
9 California contractors did work in neighboring states
10 than neighboring states' contractors did work in
11 California, so if you apply reciprocity to it, it works
12 against California contractors.

13 And so in this case, also, if you have a
14 situation where you have a product faced with a
15 commerce clause, and then you have a minimum content
16 product requirement for state procurement, it could
17 work to the advantage of an out-of-state contractor who
18 has the ability to provide that with the subsidy. So
19 you're caught between the proverbial rock and a hard
20 place in trying to implement that.

21 CHAIRMAN PENNINGTON: Okay. Any further
22 questions?
23 Mr. Rhoads.

24 MEMBER RHOADS: We were asked to look into
25 this by companies that were in the RMDZ zones or --

26 MS. TRGOVICH: These were actually

1 suggestions made by the zone administrators themselves.
2 We went over a series of reforms in the programs over
3 the last several years, and the final remaining element
4 were requests that the administrators had made that
5 were not directly related to our loan program but which
6 were broader incentives that they wished to consider
7 within the zones themselves.

8 MEMBER RHOADS: And what did they think
9 would happen if we gave the enterprise benefits to
10 them?

11 MS. TRGOVICH: It was their thought that by
12 expanding the incentives provided through the
13 enterprise zones into the rest of the RMDZ's currently
14 not covered, that business entities with the RMDZ's
15 could take advantage and therefore increase the amount
16 of diversion of material as well as the consumption of
17 secondary material as a manufacturing feedstock. The
18 businesses that would be consuming that material would
19 take advantage of these incentives.

20 MEMBER RHOADS: I am not as -- I'm going to
21 defer to my colleague to the left of me for more
22 experience in this area, but I must say I was kind of
23 intrigued about this possibility and exploring
24 legislation when I looked this item over. So thank
25 you.

26 CHAIRMAN PENNINGTON: Okay. Any further

1 discussion? Anybody want to make a motion?
2 Sounds like no one wants to make a motion,
3 so we can say thank you very much and move on to Item
4 Number 2, which is Consideration of a New Solid Waste
5 Facility Permit for the Delleker Transfer Station in
6 Plumas County.

7 AGENDA ITEM NUMBER 2

8 MR. LARIMORE: Good morning, Mr. Chairman,
9 Board members. I'm Brian Larimore from the Board's
10 Permitting Inspection Branch. Ernie Genter
11 representing the Plumas County LEA is also present.
12 This item is for a proposed solid waste
13 facility permit to allow the operation of a new
14 enclosed transfer station to accommodate long haul of
15 solid waste from eastern Plumas County to the Lockwood
16 landfill in Nevada or other regional facility.
17 Currently nearly all of Plumas County's
18 waste is disposed of at the Lockwood landfill. The
19 site is located in Delleker, Plumas County. The
20 transfer station is owned and will be operated by the
21 Plumas County Public Works Department.
22 The facility will include a 4500 square foot
23 steel building with a 3600 square foot concrete floor,
24 a push-to wall for refuse loading and a drive through
25 ramp for the transfer trailers.
26 The building will include an unloading and

1 tipping area for packer trucks and self-haulers.
2 Batteries, latex paint, and waste oil will be accepted
3 for recycling. A maximum of 52 tons per day will be
4 accepted.
5 The Board approved reduced diversion goal
6 for Plumas County as they meet their rural criteria.
7 The Board has required a 39 percent diversion by the
8 year 2000. Plumas County is currently close to fall
9 implementation of their source reduction and recycling
10 element, having achieved 29 percent diversion in 1996
11 and 31 percent in 1997.
12 Board and LEA staff have made the following
13 findings. The Board's office of local assistance has
14 determined that the proposed facility is in compliance
15 with PRC 50001. The proposed permit is consistent with
16 CEQA and the standards adopted by the Board. The
17 facility as described in the RSI is required to operate
18 in compliance of state minimum standards.
19 In conclusion staff has reviewed the
20 proposed permit and supporting documentation and found
21 them acceptable. Staff recommends that the Board adopt
22 Resolution Number 98-332 concurring in the issuance of
23 solid waste facility permit number 32-AA-0031.
24 I or Ernie would be happy to answer any
25 questions you may have.

26 CHAIRMAN PENNINGTON: Questions?

1 Mr. Eaton.

2 MEMBER EATON: Yeah. This is the
3 unincorporated area of the county; correct?

4 MR. GENTER: Yes, that's correct.

5 MEMBER EATON: And currently where are you
6 at in terms of diversion?

7 MR. GENTER: I think the county's at
8 31 percent.

9 MEMBER EATON: Is this transfer station
10 going to do anything in terms of recycling, or is it
11 just a straight transfer station?

12 MR. GENTER: It's pretty much just a
13 straight transfer station, but they will generally have
14 bins for dropoff of metals and bottles, containers.

15 MEMBER EATON: Where would this go today?
16 If this transfer station were not to be built, where
17 would the loads that will be going to the transfer
18 station be delivered to?

19 MR. GENTER: They go to a couple of other
20 transfer stations. One, Willow Glen, that's going to
21 be replaced by this facility, and they go directly to
22 Lockwood right now. From about six to ten commercial
23 compactor trucks and drop-off trucks go to Lockwood a
24 day now, and the purpose for this facility is to
25 concentrate those and self-haul into one truck a day.

26 MEMBER EATON: Without regard to Lockwood,

1 but does the other facility that this would replace
2 have any means by which to accept recycling of goods?
3 MR. GENTER: I think, yeah, they have some
4 bins.

5 MEMBER EATON: The reason why I ask is, I'm
6 very sensitive to the fact that they're rural counties.
7 I'm also somewhat compelled to speak out, not with
8 regard to basically Plumas County, but other counties
9 that -- you know we just went through a discussion down
10 in Santa Barbara on good faith efforts and the ability
11 of counties and other local jurisdictions to make good
12 faith efforts. It is hard to contemplate when you're
13 at 31 to get Co 39 and you put in a facility that
14 doesn't have any of the other types of things that
15 could get you there.

16 So I'd like some sort of, you know, kind of
17 comment, or maybe some of the Board members will want
18 to comment as to how, when we look at these good faith
19 efforts, aren't we -- when we approve these kinds of
20 items, aren't we really just sort of putting our own
21 sort of stake in our own heart at a certain point by
22 not sort of encouraging them to look beyond instead of
23 after the fact coming back and asking for some
24 assistance?

25 MR. GENTER: Well, one thing with this
26 facility and the other two similar facilities in other

1 regions of the county, each community has recycle
2 centers, buy back centers. In Chester there's a
3 transfer station just like this, but the recycling
4 operation is in downtown Chester, operated by the same
5 franchise operator that runs the facilities, and within
6 the contracts that the county has -- one thing Brian
7 didn't mention was that the physical operation of this
8 facility will be by contractor, local franchise
9 operator, who is also a local hauler, and that's the
10 way it's done at the other two facilities in the county
11 by another franchise operator, and within their
12 contracts they're required to take full part in these
13 programs within the county, and as I mentioned, they
14 have their own transfer -- recycle centers separate
15 from these facilities. And the franchise operator for
16 this facility, happens to be directly across the
17 street, actually donated this land to the county for
18 the facility, and they're right across the street.
19 They do do some of the recycling right there.

20 MEMBER EATON: But this is going to be just
21 a straight transfer, my understanding is; is that
22 correct?

23 MR. GENTER: Right. This facility, right,
24 but that doesn't say that there's not going to be any
25 recycling across the street, some at this facility,
26 possibly also.

1 MEMBER EATON: But the loads coming into the
2 facility aren't going to go to the other facility
3 first?

4 MR. GENTER: If they're loads dominantly
5 have recyclable type material, they're generally
6 directed towards appropriate facilities. They have --
7 the county has a pretty active green waste program and
8 a recycling program -- or a pump host master composter
9 program, and people would be directed to those kinds of
10 programs with those kinds of loads.

11 MEMBER EATON: But you understand, the point
12 we're trying to make is that when we look at these
13 facilities, or when you look at these facilities as the
14 individual charged with the enforcement aspect of it,
15 you know, I think you're at the sort of point of
16 contact of where you can encourage and cajole others
17 that where you have opportunities to have these kinds
18 of facilities and upgrade and modernize and help the
19 small jurisdictions, that it would be in the best
20 interest of all concerned if we could get some of those
21 kinds of other programs actually brought into some of
22 these facilities. Otherwise how are you going to reach
23 the goal?

24 MR. GENTER: I'm not that involved in that.
25 I know the county has approved three and integrated a
26 plan that describes their programs and attempts to

1 reach these goals.

2 CHAIRMAN PENNINGTON: Are you through,
3 Mr. Eaton?

4 MEMBER EATON: Yes.

5 CHAIRMAN PENNINGTON: Mr. Jones.

6 MEMBER JONES: I think Mr. Eaton brings up a
7 lot of good things. We've had this discussion three or
8 four times, you know, about where these local
9 jurisdictions are going to get their diversion. You
10 know, they rely on the haulers and everybody. It was
11 part of my briefing. That was one of the first
12 questions I asked was, where are they at as far as
13 where are they at as far as diversion goes? You know,
14 what's the number, because I get worried when I see
15 single entities if it's not part of an integrated
16 program.

17 The white goods and stuff that will be
18 stored at the facility, I'm hoping that they'll also be
19 pulled from the waste unit facility.

20 MR. GENTER: Yes, those are directed in --
21 any white goods that come into the facility are
22 directed by the the gatekeeper to the white goods
23 storage.

24 MEMBER JONES: All right. So that's part of
25 the recycling program then that's going to be taking
26 effect at the transfer station?

1 MR. GENTER: Yes.

2 MEMBER JONES: We're just -- okay. Because
3 there are some things --

4 MR. GENTER: They wouldn't --

5 MEMBER JONES: Go ahead.

6 MR. GENTER: They wouldn't accept white
7 goods unless they remove their oils, and antifreeze and
8 things like that are removed. So they won't even
9 accept them unless that's been done, and then direct
10 them to the appropriate storage site.

11 MEMBER JONES: Yeah. I don't have a problem
12 with this permit. I'm going to vote for it, but you
13 bring up a pretty interesting point. We had a bill
14 last year I think it was -- not this session. The
15 session before where operators of these facilities used
16 to remove the freon and oil, and then the bill pretty
17 much said they also had to remove any switches that
18 could be within the unit, and now you're saying that
19 they don't accept them unless those things have been
20 removed? So who's the authorized person that removes
21 that in Plumas County?

22 MR. GENTER: There are several -- what do
23 call them --

24 MEMBER JONES: Appliance dealers.

25 MR. GENTER: Yeah, appliance dealers.

26 MEMBER JONES: I just wondered, because my

1 fear was that it was going to be removed, but it was
2 going to be removed and thrown down a gulley.

3 MR. GENTER: You usually have to have a
4 little sticker from the commercial individual.

5 MEMBER JONES: All right.

6 Mr. Chairman, I'd like to make a motion that
7 we adopt Resolution Number 98-332 for the consideration
8 of a new solid waste facility permit for the Delleker
9 Transfer Station in Plumas County.

10 MEMBER EATON: And I'll second that motion.

11 CHAIRMAN PENNINGTON: Okay. It's been moved
12 and seconded.

13 I just have one question. I'm not exactly
14 sure where Delleker is. Where is Delleker?

15 MR. GENTER: Delleker is a small
16 unincorporated community, I guess you could call it,
17 just east -- a few miles west, that is, of the city of
18 Portola, which is an incorporated city, the only
19 incorporated city in the county.

20 CHAIRMAN PENNINGTON: Okay. Very good.

21 Thank you.

22 If there's no further discussion, will the
23 secretary call the roll?

24 THE SECRETARY: Board Member Eaton.

25 MEMBER EATON: Aye.

26 THE SECRETARY: Frazee.

1 MEMBER FRAZEE: Aye.
2 THE SECRETARY: Jones.
3 MEMBER JONES: Aye.
4 THE SECRETARY: Rhoads.
5 MEMBER RHOADS: Aye.
6 THE SECRETARY: Chairman Pennington.
7 CHAIRMAN PENNINGTON: Aye. Motion carries.
8 We'll move to Item Number 3.
9 AGENDA ITEM NUMBER 3
10 CHAIRMAN PENNINGTON: Consideration of a
11 Revised Solid Waste Facility Permit for the Upper
12 valley Recycling and Disposal Service Composting
13 Facility in Napa County.
14 Julie Nauman -- oh, Brian Larimore.
15 MR. LARIMORE: Brian Larimore with the
16 Permitting and Inspections Branch, and Gregg Piere is
17 joining me representing Napa County LEA.
18 This item is for revision of the solid waste
19 facility permit for the Upper valley Recycling and
20 Disposal Service Composting Facility.
21 The operator was issued a full permit on
22 August 5th, 1994, prior to the effective date of the
23 permit regulatory tiers. Although this facility is
24 only required to obtain a standardized permit, the
25 operator has decided to maintain a full permit.
26 The site is located south of the city of

1 St. Helena in unincorporated Napa County. The facility
2 is owned and operated by Upper Valley Recycling and
3 Disposal Service.
4 The facility composts grape pumice collected
5 from wineries located in the Napa Valley. During the
6 past three years, the facility has converted from the
7 windrow composting process to the aerated static pile
8 composting process.
9 The operator proposes to use wood and yard
10 waste as a bulking agent and as an amendment to the
11 finished pumice compost.
12 Board and LEA staff have made the following
13 findings. Since this facility is neither new nor
14 expanding, the countywide integrated waste management
15 plan conformance finding is not required. The Napa
16 County Conservation Development and Planning
17 Department, acting as lead agency, prepared an initial
18 study for the proposed project and determined that the
19 final environmental impact report adequately addresses
20 the environmental impacts of this project, and the
21 project is in compliance with CEQA.
22 The proposed permit is consistent with CEQA
23 and the standards adopted by the Board, and the
24 facility, as described in the report of composting site
25 information, is expected to operate in compliance with
26 state minimum standards.

1 In conclusion staff has reviewed the
2 proposed permit and supporting documentation and found
3 them acceptable. Staff recommends that the Board
4 adopts Resolution Number 98-333 concurring in the
5 issuance of solid waste facility's permit
6 Number 28-AA-0026.

7 Gregg Piere and I would be happy to answer
8 any questions you might have.

9 CHAIRMAN PENNINGTON: Questions?

10 MEMBER JONES: Mr. Chairman?

11 CHAIRMAN PENNINGTON: Mr. Jones.

12 MEMBER JONES: The Pestoni's could have
13 gotten this, I think, with the modification just on
14 the -- from an administrative standpoint, but the kind
15 of operation they run, they wanted to come up here and
16 have the Board concur in that. I think that besides
17 making good wine and being good garbage vendors and
18 good friends, they are leaders in the industry of solid
19 waste and recycling.

20 I'd like to move Resolution 98-333,
21 consideration of a revised solid waste facility permit
22 for the Upper Valley Recycling and Disposal Service
23 Composting Facility in Napa County.

24 CHAIRMAN PENNINGTON: Very good. I'll
25 second that.

26 It's been moved by Mr. Jones, seconded by

1 the Chairman.

2 MEMBER RHOADS: Just one question.

3 CHAIRMAN PENNINGTON: Yes, Mr. Rhoads?

4 MEMBER RHOADS: What's the brand of wine
5 that they make?

6 MEMBER JONES: Rutherford Grove, and I serve
7 it every chance I get, 'cause it's a good wine.

8 CHAIRMAN PENNINGTON: Any further questions
9 or discussion? If not, will the secretary call the
10 roll.

11 THE SECRETARY: Board Member Eaton.

12 MEMBER EATON: Aye.

13 THE SECRETARY: Frazee

14 MEMBER FRAZEE: Aye.

15 THE SECRETARY: Jones.

16 MEMBER JONES: Aye.

17 THE SECRETARY: Rhoads

18 MEMBER RHOADS: Aye.

19 THE SECRETARY: Chairman Pennington.

20 CHAIRMAN PENNINGTON: Aye. Motion carries.

21 We'll move to Item 4, Consideration of a New
22 Site for the Solid Waste Disposal and Codisposal Site
23 Cleanup Program, AB 2136.

24 AGENDA ITEM NUMBER 4

25 MS. NAUMAN: Mr. Chairman and members,

26 Marge Rouch who was the program manager for the AB 2136

1 program will make the presentation.

2 CHAIRMAN PENNINGTON: Thank you.

3 Marge.

4 MS. ROUCH: Good morning,

5 Chairman Pennington and Board members.

6 Today the program brings you a new site

7 that's located in the Lancaster area of Southern

8 California. It is a rural site. It's an illegal

9 disposal site, typical of many of them that we have

10 found and that we have cleaned some up. This would be

11 a Board managed cleanup, and I don't think there are

12 any real issues with this site because it appears to be

13 just kind of an ordinary legal disposal site. This

14 would be one of our few that we have done in Los

15 Angeles County for the LEA, and this is per their

16 request.

17 If there are any questions, I would be happy

18 to answer.

19 CHAIRMAN PENNINGTON: Questions?

20 MEMBER EATON: Yes.

21 CHAIRMAN PENNINGTON: Mr. Eaton.

22 MEMBER EATON: As you know, yesterday when

23 we had a discussion, one of the concerns that was

24 raised was cost recovery, and I still believe cost

25 recovery is an issue. Do we know what the viability of

26 cost recovery is with regard to the owners of the

1 property?

2 MS. ROUCH: No. I do not know if these
3 people have money or if they do not have money. We do
4 know that the property does not have a lot of value,
5 but we could put a lien on that property.

6 MS. TOBIAS: I'm going to discuss cost
7 recovery with you in the litigation update that we'll
8 do at the second October meeting, so that will be kind
9 of an overview on it.

10 You know, generally, I think the policy that
11 we have at this point is if there is an asset that is
12 either presently or we think, you know, in the future
13 able to support anywhere near the cost of the recovery,
14 that we will basically go after the owners. In some
15 ways people will voluntarily put a lien on their
16 property. Others we've gone after legally. I don't
17 really like to get into the specifics on cost recovery
18 in a public meeting, but I can say that generally those
19 are the kinds of things we look at. You know, is there
20 an asset? Either the property itself or do the owners
21 have other assets, but I will be talking to you about
22 this in closed session.

23 MEMBER EATON: And I agree, but I think that
24 one of the things that we've all discussed here is a
25 general issue of how we seek recovery, and one of the
26 problems we've had is roadblocks thrown in our own

1 counsel's way, either because of statutes or recovery
2 or those kinds of things. I think it's a much broader
3 issue, but one of the things, as we know, and we always
4 have a good discussion in our briefings about 2136 is
5 that, you know, just trying to hit the moving target,
6 because when I look at this site, I don't see any
7 health and safety problems, where unlike others issues.
8 And so it's open in the desert. I'm not saying that
9 they're not entitled to have their legal dumps cleaned
10 up, but as mentioned, there are several roads that lead
11 to this; correct?

12 MS. ROUCH: Yes.

13 MEMBER EATON: And how are we going to
14 police so it doesn't reoccur, and are we only spending
15 the money and then six months later it's right back
16 where we were, and I think that's some of the criteria,
17 and this doesn't appear to be one of those sites which
18 has a tremendous high criteria of health and safety
19 compared to some of the other sites you brought before
20 us.

21 MS. ROUCH: That is true. I think where
22 this site falls in under the law is that the law states
23 that there is money available to clean up illegal
24 disposal sites, and then the law says that there is
25 money available to fund remediation of environmental
26 problems, you know, of a more health and safety --

1 detrimental to health and safety issue, and a lot of
2 illegal disposal sites don't have the same high risk
3 levels that a burn dump would have or an old landfill
4 would have where the cap needs to be repaired.

5 You are right. It's not like there are
6 little kids playing in this area. There are homes
7 nearby, but not a lot of them. It's just a case of
8 there is all this trash out there, and the county has
9 asked us to help them clean it up. It is being dumped
10 in a wash, and under a major rainfall, it could be
11 washed away to a more environmentally sensitive area.
12 That's possible.

13 MEMBER EATON: Are there other sites on your
14 list that have a higher health and safety concern than
15 this one?

16 MS. ROUCH: Yes. We have some that we're
17 working on, but they're nowhere near being ready to be
18 brought to the Board. We're working to bring them to
19 you, you know, as we can go through the process.

20 MEMBER EATON: So you don't see any danger
21 of imminent safety and health and safety concerns on
22 this site here, though?

23 MS. ROUCH: No, I can't say that there is.

24 MEMBER JONES: Mr. Chairman?

25 CHAIRMAN PENNINGTON: Mr. Jones.

26 MEMBER JONES: This is an unfair question to

1 ask you, but I'm going to ask it anyway.

2 Did you check the neighbors to see if they
3 had garbage service?

4 MS. ROUCH: No, but, you know, if the staff
5. person who's working on this project were here he might
6 be able to answer that. I don't know. I cannot tell
7 you that today, but I will find out.

8 MEMBER JONES: Because if they didn't, this
9 may be their local dump. It's out in the middle of the
10 desert. There's nothing around; right?

11 MS. ROUCH: No. That's right.

12 MEMBER JONES: I'd like -- you know, I mean
13 there's five of us up here. If somebody wants to make
14 a motion, I guess that's fine, but I'd sure like to do
15 a little more work.

16 We've had some pretty interesting
17 discussions where people had to vote for cleanups
18 against -- well, I don't want to say -- it was tough to
19 vote for some cleanups, but it was a proven health and
20 safety risk that we swallowed hard and spent a lot of
21 money to ensure that the health and safety of people
22 down river, of people in other areas would not be
23 affected by, you know, illegal dumping. This one is --
24 it's ready to go, but if there's not a health and
25 safety issue, and -- you know, we don't know who the
26 source of this dumping is, and I'd like to know if it's

1 the neighbors. 'Cause if it is, then if it washes and
2 washes into their backyard, I don't have a problem with
3 that.

4 MS. ROUCH: I'd like to make a comment. I'm
5 a little bit handicapped because the staff who really
6 are intimately involved with this project are out in
7 the field doing their construction work. This is our
8 peak construction season for the rainy season, so I
9 don't have all the answers that you'd like.

10 MEMBER JONES: Would it be fair that in
11 maybe two weeks you could have that answer?

12 MS. ROUCH: Yes. Yes.

13 CHAIRMAN PENNINGTON: Okay. Why don't we
14 put this over for two weeks and move it to the
15 October 21st Board meeting.

16 MS. ROUCH: Excuse me. Will that allow me
17 time to meet the -- okay.

18 MEMBER JONES: We'll just continue it.

19 MS. ROUCH: Okay.

20 CHAIRMAN PENNINGTON: Yeah. We'll just
21 continue it over.

22 MS. ROUCH: Okay.

23 MEMBER EATON: And if there's any reason
24 that the 21st, because of the staff person, the other
25 things are still out in the field trying to just wind
26 up before the last rains, I don't think that, you know,

1 another week or two, you know, whatever you need.

2 CHAIRMAN PENNINGTON: Very good.

3 We'll move on to Item Number Five.

4 AGENDA ITEM NUMBER 5

5 CHAIRMAN PENNINGTON: Consideration of a

6 Revised Solid Waste Facility Permit for the Orange

7 Avenue Disposal Service in Fresno County.

8 Julie Nauman.

9 MS. NAUMAN: Mr. Chairman and members,

10 Virginia Rosales with the permitting and inspection

11 division branch of the division of PME will present

12 this item.

13 CHAIRMAN PENNINGTON: Thank you.

14 MS. ROSALES: Thank you. Good morning,

15 Mr. Chairman and Board members. With me is

16 Steve Rhodes from the LEA office, and also present is

17 Tim Casagrande the branch manager of the environmental

18 systems.

19 This item is a revised permit for Orange

20 Avenue Disposal Service, Incorporated, located in the

21 city of Fresno, Fresno County.

22 For the record, Board members should have

23 received a revised page 510 of the proposed permit.

24 The change on that particular page was to Permit

25 Condition 170, which basically removed reference to

26 Title 8.

1 Also you should have received
2 Resolution 98-334, which was not previously included with
3 your agenda item, and for anyone interested in the
4 audience, there are copies of these two items on the back
5 table.

6 CHAIRMAN PENNINGTON: The Chair would like to
7 have one.

8 MS. ROSALES: You don't have one?

9 CHAIRMAN PENNINGTON: Oh, here it is.

10 MR. RHODES: May I clarify that?

11 CHAIRMAN PENNINGTON: Sure.

12 MR. RHODES: It's actually Item 0, not zero.

13 MS. ROSALES: Oh, I'm sorry. 17-0.

14 CHAIRMAN PENNINGTON: Okay. We got it.

15 MS. ROSALES: This facility is owned and
16 operated by Orange Avenue Disposal Service,
17 Incorporated. This proposed permits updates the existing
18 1978 permit by clarifying the permitted area to be 38.73
19 acres instead of 40 acres, establishes a disposal footprint
20 to be 29.2 acres, establishes a new closure date of March
21 2005 and incorporates new and/or updated governing
22 documents.

23 Since the item was prepared staff have
24 completed the analysis of the application package and find
25 the following items to be acceptable. The
26 closure, post-closure maintenance plan has been deemed

1 complete. The EIR that was completed for the proposed
2 project, staff finds to be adequate for the Board's
3 consideration. The RFI is complete and meets the
4 requirements of Title 27 as certified by the LEA. The
5 LEA conducted their monthly inspection on
6 September 24th, 1998 and continues to find, as Board
7 staff did on July 1, 1998, that the facility is in
8 compliance except for the violation of Public Resources
9 Code, which the issuance of this permit would correct.
10 Therefore, staff recommends the Board adopt
11 Resolution Number 98-334 concurring in the issuance of
12 solid waste facility's permit number 10-AA-0013.
13 This concludes staff's presentation. Also
14 present are the representative of the owner/operator,
15 the Caglia family, and their consultant Evan Ager.
16 If you have any questions?

17 CHAIRMAN PENNINGTON: Okay. Questions on
18 this one?
19 If there are no questions -- If there's no
20 questions, no opposition, we don't have to listen to
21 any.

22 MEMBER JONES: That's the same as the
23 Caglia's money.
24 Mr. Chairman?

25 CHAIRMAN PENNINGTON: Yes, Mr. Jones.

26 MEMBER JONES: The patriarch of that family

1 is sitting in the audience that bought that facility in
2 1941 and is up here and spent a lot of time in this
3 business, and his kids have taken it over, and as I
4 understood in my briefing, there have been no -- this
5 facility has been cleaned up quite a bit, and there are
6 no issues anymore.

7 MS. ROSALES: That is correct.

8 MEMBER JONES: With that I'll move
9 Resolution 98-334, the revised solid waste facility
10 permit for the Orange Avenue Disposal facility in
11 Fresno County.

12 MEMBER FRAZEE: I'll second.

13 CHAIRMAN PENNINGTON: Okay. Mr. Jones
14 moves. Mr. Frazee seconds. If there's no further
15 discussion, will the secretary call the roll.

16 THE SECRETARY: Board Member Eaton.

17 MEMBER EATON: Aye.

18 THE SECRETARY: Frazee.

19 MEMBER FRAZEE: Aye.

20 THE SECRETARY: Jones.

21 MEMBER JONES: Aye.

22 THE SECRETARY: Rhoads.

23 MEMBER RHOADS: Aye.

24 THE SECRETARY: Chairman Pennington.

25 CHAIRMAN PENNINGTON: Aye. Motion carries.

26 I think we might break now for lunch.

1 It's -- this clock is --

2 MR. CASAGRANDE: Thank you very much, ladies
3 and gentlemen, I appreciate your effort.

4 CHAIRMAN PENNINGTON: Thank you.

5 People it's ten minutes to 12:00 now and
6 let's break for lunch and be back at 1:30.

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20 AFTERNOON SESSION

21 CHAIRMAN PENNINGTON: Okay. We'll call the
22 October 6th meeting of the Integrated Waste Management
23 Board back to -- back in session.

24 EX PARTES

25 I'll start first with Mr. Eaton. Any
26 ex partes partes that you need to do?

1 MEMBER EATON: No.
2 CHAIRMAN PENNINGTON: Okay. Mr. Jones?
3 MEMBER JONES: None.
4 CHAIRMAN PENNINGTON: Mr. Rhoads?
5 MEMBER RHOADS: No.
6 CHAIRMAN PENNINGTON: Frazee?
7 MEMBER FRAZEE: No.
8 CHAIRMAN PENNINGTON: And I don't either.

9 As a reminder, if there's anyone in the
10 audience who wants to address any particular item on
11 the agenda, there's speaker slips in the back. If you
12 fill one out, get it to Ms. Kelly here, we'll make sure
13 that you are heard from.

14 AGENDA ITEM NUMBER 6

15 And we'll begin with Item Number 6,
16 Consideration of the Calculation of a Primary 1997 and
17 Revised 1996 California Post-consumer Paper Recovery
18 Rate. Preliminary.
19 Ms. Trgovich.

20 MS. TRGOVICH: Good afternoon, Chairman and
21 members. John Blue will be making this presentation.
22 I'd just like to remind you that this is not
23 a mandatory rate. This is a voluntary rate that the
24 Board established many years ago, and John will be
25 reporting to you on the calculation as well as some
26 actions we have taken in the past year to address these

1 issues.

2 MR. BLUE: Good afternoon,

3 Chairman Pennington and Board members. My name is

4 John Blue, and I'm representing the market analysis and

5 services section of the waste prevention and market

6 development division.

7 CHAIRMAN PENNINGTON: That is a mouthful.

8 MR. BLUE: I've prepared a little power

9 point slide show here for you. Let's see if it still

10 works.

11 The first question. Why am I here today?

12 The Board approved a post-consumer paper recovery rate

13 calculation method in 1994, and set a voluntary goal to

14 reach 50 percent recovery by 2000 and asked for an

15 annual progress report to the Board. This is important

16 because paper's a large portion of the waste streams.

17 It represented about 29 percent in 1990, and we saw

18 potential for increasing paper recovery.

19 The Board set a series of goals stepping up

20 from 1993, linearly hoping to achieve 50 percent

21 recovery by the year 2000. In 1997, sort of a summary

22 of what happened, the market started strong, actually

23 saw some increasing prices on most paper grades demand,

24 but that started to decline about the second quarter,

25 largely due to the Asian economic crisis in a decline

26 and Asian mill consumption of U.S. fiber. There was an

1 increase in domestic mill consumption, but this was
2 offset by a large increase in generation. Most
3 probably due to a strong domestic economy.
4 If we can have a drum roll please. The
5 preliminary 1997 post-consumer paper recovery rate for
6 all paper is 31.01 percent. The preliminary recovery
7 rate for newsprint was 46 percent and for old
8 corrugated cardboard is about 48 percent.
9 The obvious question is did we meet our goal
10 this year? Not quite this year. The goal for '97 was
11 42.9 percent, and we actually achieved about
12 31 percent.
13 The question, why not? The export market
14 was flat, as I mentioned earlier. There was strong
15 domestic economic growth and a large increase in
16 generation of post-consumer paper.
17 Additionally, though there was significant
18 growth in domestic mill consumption, California's share
19 of that was very, very small.
20 The revised 1996 numbers was just revised
21 slightly from from 31 percent to 31.2 percent, and old
22 newsprint lists upward of two-tenths of a percent to
23 47.9, and the old corrugated cardboard revised slightly
24 down to 49 percent.
25 You may wonder why we revise these numbers
26 each year. We revise them based on revised federal --

1 numbers we get from the Federal government, American
2 Forest and Paper Association also produces preliminary
3 figures and updates about six to seven months later,
4 and the Board of Equalization, we use some of their
5 information in this calculation as well, and they
6 present updated figures significantly past the due date
7 for this item.

8 1998. We're almost through the year. What
9 can we expect? I expect more of the same. The exports
10 nationwide are up. Exports have recovered fiber.
11 Unfortunately the bulk of this increase in exports is
12 to Canada, and California does not currently access the
13 paper market. That's more East Coast fiber.

14 And most recently, you know, wondering when
15 is Asia going to recover. Well, Alan Greenspan sees no
16 sign of an Asian economic recovery, although he was
17 contradicted recently by someone saying that -- and he
18 is the president of international chamber of
19 commerce -- said he saw recovery, but that would be two
20 to three years in the future. So I think that's kind
21 of a general consensus.

22 This concludes my presentation. I'd be
23 happy to entertain any questions.

24 CHAIRMAN PENNINGTON: Questions?

25 MS. TRGOVICH: Chairman Pennington, if I
26 could just point out for you.

1 CHAIRMAN PENNINGTON: Sure.

2 MS. TRGOVICH: If you look on page 6 of your
3 item, you'll see that we had conducted a forum last
4 December on paper utilization and paper diversion.
5 This was a result of the calculation of the 1996 paper
6 utilization rate, which was approximately at the same
7 level. Correct, John, or approximately 31 percent?

8 MR. BLUE: About exactly the same.

9 MS. TRGOVICH: And as a result of that, the
10 Board asked a question, what is it that we can do, or
11 what are some of the barriers out there? And we held a
12 forum in December and brought some suggestions back to
13 the Board in April, and the Board processed 200 takes
14 in activities, some monitoring activities, some
15 educational activities around pressure sensitive
16 adhesives based upon the development of such by the
17 U.S. Postal Service to look at updating our statewide
18 figures, and that will be done as a result of the waste
19 characterization study that the Board is about to
20 embark on, and then to look at estimating the
21 percentage from California -- exported from California
22 ports. We have been undertaking those activities. I
23 just want to point out this is one of the markets that
24 this is very difficult for us to effect. The
25 calculation of the recovery or utilization rate is how
26 much is recovered or recycled over how much is

1 generated. So we can either increase how much is
2 recovered, or we can decrease the amount of generation.
3 We have a significant undertaking in the area of waste
4 prevention. We are embarking upon a project with the
5 State Bar Association focusing on the legal sector, and
6 we're developing other projects along those lines to
7 reduce paper generation

8 On the recovery side, it's very difficult
9 for us to effect this because mill capacity is
10 generally located out of state, and as more states
11 online are developing their own programs, it may be more
12 advantageous for mills to take advantage of more
13 geographically located paper recovered paper
14 sources. So we have somewhat of a difficulty in this
15 area, but we do and are developing programs to attempt
16 to address the decline in recovered paper utilization.

17 CHAIRMAN PENNINGTON: Okay. Questions of
18 the staff?

19 Mr. Rhoads

20 MR. RHOADS: I assume you're not very
21 optimistic about meeting the 50 percent goal by the
22 year 2000

23 MR. BLUE: I'm not

24 MS. TRGOVICH: He said it.

25 MR. BLUE: When we set these goals -- when
26 the Board set these goals originally, the export market

1 was rather high, and I think the assumption was it
2 would remain that way. In the subsequent period, the
3 export market has not been high.

4 MR. RHOADS: Did you see -- I don't want to
5 preach bad news here, but it is on the agenda -- do you
6 see the 31 percent just staying constant over time?
7 What do you see happening?

8 MR. BLUE: One thing that's important to
9 note. There were two things at work here. One was
10 that we had the decline in the Asian economy, which
11 decreased our export to the Asia, recovered fiber, and
12 simultaneously we had a large increase in domestic
13 economic growth. It was boom times in California
14 particularly.

15 So those two are playing off against each
16 other. California has been historically dependent on
17 the Asian export market to offload a lot of its fiber.
18 Unfortunately -- and while that remained flat, industry
19 took up a lot of the slack and domestic mill
20 consumption is at an historically high number. Mill
21 consumption of recovered paper is higher now than it
22 ever has been. It grew about five or six percent -- I
23 can't remember exactly, but somewhere around five or
24 six percent, which is a large increase. The trouble
25 was, the generation was so large, the increase in
26 generation over the same period.

1 So as long as Asia is in decline or flat and
2 our economy is growing, we're going to see this sort of
3 flat lining of the recovery rate. I don't see our
4 economy staying, you know, at the high rate of growth.
5 We're already starting to see an hints of it declining
6 now. There's always more mill capacity coming online.

7 MS. TRGOVICH: One of the things to point
8 out, too, is what you're seeing here is a California
9 rate. John explained to you that the overall
10 generation has increased and somewhat significantly.
11 That's not to say that utilization nationally has
12 designed along with our numbers here for California.
13 It's likely that that utilization has increased.
14 John, what I'm referring to is what we are
15 calculating here is the California rate.

16 MR. BLUE: We use national regional numbers.

17 MS. TRGOVICH: And so we're extrapolating
18 backwards. So it's based upon our own figures, and I
19 believe that our export alone, and John explained how
20 the export markets are affected, but we -- what is it
21 John, approximately 30 percent?

22 MR. BLUE: About 30 percent, yeah.

23 MS. TRGOVICH: -- 30 percent of our
24 recovered paper was heading out towards export markets.

25 CHAIRMAN PENNINGTON: Okay. We have
26 Mr. Rick Best who wanted to address us on this issue.

1 MR. BEST: Thank you, Mr. Chairman and Board
2 members. Rick Best with Californians Against Waste.
3 I just wanted to offer a couple of brief
4 comments. I think with regards to the staff
5 calculation of the rate we don't have any issues. I
6 think the revision of the 1996 rate and the calculation
7 of '97, we talked with staff and feel pretty
8 comfortable.
9 With those numbers, I guess I wanted to
10 specifically address the policy implications of the
11 utilization rate and the fact that now for the last
12 several years the industry has not met the
13 requirement -- has not met the goal that was
14 established by this Board. I mean, as the staff
15 indicated, paper is the largest single component of the
16 waste stream. It's one where everyone talks about. We
17 need to get the most bang for the buck out of the paper
18 waste stream in terms of maximizing recovery.
19 I think for the first several years that
20 this utilization program was in place, we saw a
21 tremendous progress by the paper industries in terms of
22 the increasing rate, but for the last couple years it's
23 leveled off and declined slightly. We're certainly
24 encouraged by the fact that mill consumption has
25 increased, but with the simultaneous increase in the
26 generation we're not seeing the progress that we need

1 to see. So I think when this utilization policy was
2 established, it was partly the idea that the Board
3 would use this as a way of measuring how we're doing in
4 terms of paper recovery, and if there was problems, if
5 we weren't seeing that, the Board could look to
6 developing other policy instruments to help increase
7 paper recovery. I think we're getting to the point
8 where the Board may need to start looking at that. I
9 think for the first couple of years we were kind of on
10 a hands-off approach and letting us see how the paper
11 industry did, but I think now the evidence is that
12 we're not getting close enough to the 50 percent
13 requirement. I think we need -- the Board needs to be
14 starting to look at other policy implications. I think
15 the work that the Board staff is doing on the quality
16 issues and the stickies issues, those are things that
17 certainly need to be done, but I think there's a bigger
18 issue in terms of increasing paper recovery that we
19 need to address.
20 I think one issue, for example, that could
21 be looked at is trends in the paper industry in terms
22 of capacity. You know, to what extent has there been
23 an increase in actual capacity of recycled content
24 paper as compared to virgin capacity, because if all
25 the mills coming online are virgin capacity, that's not
26 helping us get to where we need to go.

1 So I think there are some other things that
2 we could be looking at and trying to make a case for
3 other policy initiatives to increase paper recovery.
4 So those are my comments. We'd like to see
5 the Board do a more, you know, indepth look at this and
6 come back, you know, with some other recommendations,
7 hopefully.

8 CHAIRMAN PENNINGTON: Questions of Mr. Best?
9 Okay. Thank you. Okay.
10 Any other questions of staff? If not, I'll
11 be happy to entertain a motion.

12 MEMBER FRAZEE: Mr. Chairman, I'll move
13 adoption of Resolution Number 98-323.

14 MEMBER JONES: I'll second.

15 CHAIRMAN PENNINGTON: Okay. It's been moved
16 by Mr. Frazee and seconded by Mr. Jones to adopt
17 Resolution Number 98-323.

18 If there's no further discussion, will the
19 secretary call the roll.

20 THE SECRETARY: Board Member Eaton.

21 MEMBER EATON: Aye.

22 THE SECRETARY: Frazee.

23 MEMBER FRAZEE: Aye.

24 THE SECRETARY: Jones.

25 MEMBER JONES: Aye.

26 THE SECRETARY: Rhoads.

1 MEMBER RHOADS: Aye.

2 THE SECRETARY: Pennington.

3 CHAIRMAN PENNINGTON: Aye. Motion carries.

4 AGENDA ITEM NUMBER 7

5 We'll move to Item Number 7, Consideration

6 of Criteria for Evaluating Applications for the Fiscal

7 Year 98/99, Tire Product and Processing Promotion

8 Grants Program.

9 Caren Trgovich.

10 MS. TRGOVICH: Martha Gildart and Nate Gauff

11 will make this presentation.

12 MS. GILDART: Good afternoon, Chairman and

13 members. I'm Martha Gildart with the waste prevention

14 market development division.

15 Staff is seeking approval of the preference

16 criteria to be used in ranking grant applications. If

17 you remember, in the early years of the tire recycling

18 grant program, we funded many research and development

19 type grants. Over time we have focused more narrowly

20 on specific uses, particularly in response to needs

21 expressed by the crumb rubber industry.

22 This year staff has proposed to broaden the

23 grant program again and to assist new products or

24 processing technologies that have since been developed

25 to reach markets.

26 If you remember, in its April '98 meeting

1 the Board moved to allocate \$481,000 to be made
2 available to businesses, individuals and local
3 governments to promote the commercialization of new
4 processes or products made from waste tires.
5 Nate Gauff of the secondary materials and
6 technology branch will describe the preference criteria
7 as proposed by staff. After that Caren Trgovich will
8 summarize discussions held both at the April meeting
9 and subsequently on whether to expand the scope of the
10 grant.

11 MR. GAUFF: Good afternoon, Mr. Chairman and
12 Board members.

13 Before I talk about the preference criteria,
14 I'd like to provide a framework for these grants.
15 These grants have been recommended by staff to be
16 awarded to local governments, businesses, and
17 individuals for projects that would result in the use
18 of a minimum of 250,000 passenger tire equivalents per
19 year, and in addition the grants would be \$80,000
20 maximum with a requirement of a 50/50 match as a
21 minimum by the grantee.

22 In addition to the standard Board criteria,
23 staff has proposed three preference criteria in
24 consideration with this program. The first being the
25 grantees match contribution in excess of the minimum
26 50/50 grant. Staff feels that the more money that the

1 grantee puts in, the more buy-in they're going to have
2 for their project and also the more dollars available
3 to accomplish hopefully a larger project that will use
4 more tires.

5 The second preference criteria is looking at
6 the potential diversion of tires for the given product
7 or processing technology, and that diversion potential
8 will be measured by actual letters of commitment or
9 letters of intent that the applicant can supply to
10 staff to prove they have an outlet for their tire
11 material or tire product.

12 And the third criteria or third preference
13 criteria is for the use of California tires in the
14 demonstration of the technology or in the manufacture
15 of the product. We certainly don't want to exclude
16 out-of-state manufacturers or processors, but certainly
17 we would like to give preference to the California
18 based manufacturers and processors, and we will this
19 criteria will help accomplish that.

20 Any questions?

21 CHAIRMAN PENNINGTON: On the match, you say
22 if it's greater than 50/50, is that going to be on a
23 sliding scale? I mean if somebody came in and said
24 they wanted 100,000 -- you know, they wanted \$100,000
25 grant and they were willing to put up \$105,000, do they
26 get the 15 points?

1 MR. GAUFF: Well, it will be a sliding
2 scale. I think in the last program that we had a
3 preference criteria for match it basically ranged from
4 50/50 to about a five to one ratio of applicant dollars
5 to Board money.

6 CHAIRMAN PENNINGTON: So they might get one
7 preference point for that?

8 MR. GAUFF: Possibly.

9 CHAIRMAN PENNINGTON: Possibly. Okay.
10 Somewhat the same thing on the potential diversion.
11 Would that be on a slide as well?

12 MR. GAUFF: Yes, it would.

13 CHAIRMAN PENNINGTON: Other questions?

14 MEMBER EATON: I'd like to hear from
15 Ms. Trgovich first.

16 CHAIRMAN PENNINGTON: Sure.

17 MS. TRGOVICH: There is one more piece to
18 this presentation, and that is the allocation that
19 actually occurred last April and some subsequent
20 discussions that have been held. At the time of the
21 allocation item last April, there was discussion by
22 Board Member Chesbro that this grant program be
23 broadened to include local government. In his
24 discussion, Mr. Chesbro, Member Chesbro, included a
25 request the the program be broadened to include
26 procurement by local government as well.

1 This grant program, as it is being proposed
2 before you today, includes an eligibility criteria that
3 would allow for local government to compete along with
4 private sector businesses for these commercialization
5 grants, but the program right now is limited to
6 commercialization. Because of the lack of clarity
7 around Member Chesbro's addition to the motion, we went
8 back and reviewed the transcript and found there was
9 some ambiguity around whether or not that element of
10 Mr. Chesbro's motion made it into the final motion of
11 the Board. The motion did include Member Chesbro's
12 requests that the grants be broadened to include
13 procurement by local government, but there was no
14 further discussion around the specific procurement
15 element.

16 So what I'm raising for you is there is an
17 issue here before you here with respect to this program
18 in terms of how you want to proceed. What staff would
19 recommend is that, regardless, you would likely need,
20 if you want a procurement element to this program, to
21 have a subsequent item come before you in order to
22 allocate funds specifically for that purpose. What we
23 would suggest to you is that you direct staff to issue
24 the NOFA for this grant program, and perhaps what you
25 want to do is direct us to make available some portion
26 of that \$481,000 initially. We are not proposing a

1 reallocation. What we are saying is, let's see what
2 the interest is and in the event the applications are
3 not sufficient or it is not your will to award the
4 entire 481,000, that you could address the ambiguity
5 around Member Chesbro's desire on the record to have
6 this grant program include procurement as well at then
7 a later date. We are suggesting this because
8 procurement is very different from the
9 commercialization grants being proposed here, and it
10 would be inappropriate to combine the two into a single
11 grant program. So regardless, we would be recommending
12 that you bifurcate the program and that you move a
13 procurement element out, if it was your desire to do
14 so.

15 MR. RHOADS: I have a question.

16 CHAIRMAN PENNINGTON: Mr. Roads.

17 MR. RHOADS: What does procurement mean? I
18 mean, can you give me an example?

19 MS. TRGOVICH: When we reviewed the
20 transcript, Member Chesbro's examples referred to
21 rubberized asphalt concrete. They referred to running
22 tracks and other elements. There was a discussion by
23 other members on the record as well, that perhaps that
24 was not the direction that they necessarily wanted to
25 go, but there is a lack of clarity around the final
26 motion.

1 CHAIRMAN PENNINGTON: Okay.

2 Mr. Eaton?

3 MEMBER JONES: That's what I'd like to talk
4 about, 'cause it seems to me we had a discussion about
5 that, that -- I mean, I understood his motion, but it
6 sure seems to me like we had a lot of discussion
7 considering -- I think we had just given away half a
8 million dollars for procurement of mats and some other
9 things at that same allocation meeting.

10 MS. TRGOVICH: And that was raised. When
11 you review the transcript, you'll see that we did
12 discuss -- there three other elements actually. There
13 is the approval of the playground mat program. There
14 was a approval of a \$150,000 green building procurement
15 program, which is targeted at local governments and
16 potentially state agencies. So there was a discussion
17 around whether or not that would address the need, but
18 on the record, Member Chesbro was still concerned that
19 that be an element of this program as well.

20 MEMBER JONES: Was it offered as -- excuse
21 me.

22 CHAIRMAN PENNINGTON: Go ahead.

23 MEMBER JONES: Was it offered has an
24 amendment to the --

25 MS. TRGOVICH: No. The final motion
26 approved by the Board --

1 MEMBER JONES: Who made the motion?

2 MS. TRGOVICH: The motion --

3 MEMBER EATON: I did.

4 MEMBER JONES: You made the first -- the
5 original motion?

6 MEMBER EATON: Well, there was a big
7 discussion about a number of items --

8 MS. TRGOVICH: Chairman Pennington actually
9 made the --

10 MEMBER EATON: -- and this is one of them,
11 so one of the ways that we have decided that
12 basically -- there are two issues here. One, we don't
13 know exactly where the demand's going to be, and I
14 think Ms. Trgovich pointed that out in terms of a
15 certain amount. It doesn't hurt us right at this
16 moment until we figure out what the demand is as well
17 as clear up the ambiguity that we set a certain sum
18 aside. That goes forward. This other one's held in
19 abeyance, and we can either -- it's only -- we're
20 looking at somewhere about 181,000 and whether the
21 issue of procurement and/or demand at a later time, and
22 I'm talking like within about a month or so, comes to
23 fruition. That's all that we're looking at, but we
24 move forward on a good chunk -- on a good 300 and then
25 just see, because there is a lot of ambiguity. I've
26 been through the transcript on other matters, too, and

1 I remember the discussion pretty clearly for the most
2 part, and it was where, if you remember, we were trying
3 to put everything up on the screen, and we had some of
4 it in bits and pieces. So I think reasonable minds
5 could differ, but we have a no harm, no foul situation
6 here, where if we just take some of the money and just
7 sort of, you know, seek clarification, then if we
8 decide as a Board on the other 181 either to roll it
9 back in and/or use it for at least some clarification
10 as to what procurement eligibility might be.

11 CHAIRMAN PENNINGTON: Let's hear what the --

12 MS. TRGOVICH: The motion was made by
13 Chairman Pennington, and it's a long list, so I will
14 not read it with respect to all the items.

15 When we get to tire products promotion and
16 product matching grants at 400,000 -- 481,
17 Member Chesbro interjected, "Including local
18 governments."

19 Member Pennington then said, "Including
20 local government."

21 So the lack of clarity is whether or not
22 there was -- whether or not that element meant to
23 expand beyond the proposed commercialization element
24 into Member Chesbro's desired product procurement
25 element. We are not recommending a reallocation. What
26 we are just simply saying is perhaps we would just like

1 to see, or it would be your desire to see what the need
2 is, and we could put the NOFA out at perhaps 325,000 up
3 to 481, or something like that.

4 CHAIRMAN PENNINGTON: Okay.

5 Mr. Jones.

6 MEMBER JONES: Mr. Eaton and I were having
7 our side discussion while we were in the middle of
8 this -- I don't have a problem with that. I mean, if
9 we said, yeah, that it includes it, then that's fine.
10 Mr. Eaton had suggested we allocate 300 and
11 hold the 181 for another discussion.

12 And see what the need is?

13 MEMBER EATON: Right, and some of the
14 ambiguity. I think that's kind of where we are. You
15 know, get it wrapped up.

16 MS. TRGOVICH: My suggestion would be, if
17 it's your will to proceed that way is that we put the
18 NOFA out at, you know, a minimum of 300,000 up to 481,
19 if legal feels that that's okay, since that was the
20 original allocation, was the 481,000, and you are not
21 reallocating funds at this time.

22 MEMBER JONES: We are not obligated to give
23 out more than 300,000 on that NOFA; right?

24 MEMBER EATON: Well, it says up to 481.
25 That's where you get into a problem.

26 MR. RHOADS: Don't you have the complete

1 range from zero to 481 on that? I mean, it has to come
2 back to the Board, and the Board has to decide what the
3 level is.

4 CHAIRMAN PENNINGTON: Isn't it like
5 authorization? In other words, we're saying if there
6 isn't a need for it, you can go ahead and go to 481.
7 If there is the need for it, you can stop at 300. It's
8 like an authorization.

9 MEMBER EATON: I would agree if the
10 ambiguity didn't exist. I think that's perfectly --
11 but there is an ambiguity there as to what exists, and
12 I think that's where we're just trying to find the
13 fairness. I think if you up to 481 that's where you
14 end up anyways.

15 MR. CHANDLER: Caren, is it your proposal
16 that if we've advertised it at 300,000 up to 481, it
17 would be in an advertise but only for the R & D type,
18 and there would not be a reference necessarily to the
19 local government procurement? So the bind we would get
20 into potentially is if we got \$500,000 of legitimate
21 applications, we are, in effect, at a position where we
22 really don't have any dollars available should someone
23 want to come in and apply for some procurement related
24 projects.

25 MS. TRGOVICH: However, there is -- if that
26 kind of demand exists for this program, the Board

1 certainly has it within in its discretion to consider
2 whether or not the playground grant program, plus the
3 local amnesty day grant program, plus the green
4 building program met that need, that other identified
5 need of a procurement element.

6 CHAIRMAN PENNINGTON: How are we going to
7 determine that need?

8 MS. TRGOVICH: What we would be proposing is
9 that it is a result of the NOFA. We would go through
10 the normal process. Set the applications. Set up the
11 panels. Score the applications, and we would bring
12 forward to you a listing in ranked order of those
13 applications, and we would show you what the \$300,000
14 recommended funding level would be, what 481 would look
15 like, and then what anything beyond that that met the
16 minimum scoring criteria but was below the maximum
17 funding level of 481, and it would be before you at
18 that point in time as to whether or not at what level
19 you wanted to make that available.

20 I would like to remind you that in prior
21 years that I have been with this program, we have had
22 sufficient funds left over from our other contracting
23 grant programs that we've been able to fully fund all
24 applications and move down the list through a
25 reallocation cycle.

26 MEMBER JONES: Mr. Chairman?

1 CHAIRMAN PENNINGTON: Mr. Jones.

2 MEMBER JONES: I think the way I understood
3 that was that the NOFA would go out for 300. If the
4 request came in for over 300, we could deal with it,
5 and that would preserve that 181, and we could deal
6 with that -- do we send another NOFA out -- well, I
7 guess we have to have the discussion; right? I mean,
8 if we send this NOFA out for 300, then do we come back
9 and have the discussion after we see the transcripts
10 and look at a need, or do you send out another notice
11 on that for the school grants, or what's the deal
12 there? How does that --

13 CHAIRMAN PENNINGTON: I think you have to
14 send out another.

15 MS. TRGOVICH: I think what we would need to
16 do is we would need to go back and take a look at that
17 as whether or not you would need to consider that prior
18 to the actual awards coming forward as a separate item.
19 We would need to discuss that with legal. Since this
20 issue came up, we would need to take a look at that.
21 What we're seeking today is simply the
22 approval of the criteria to go out with the
23 commercialization element.

24 MEMBER JONES: But we may not be able to get
25 there.

26 How many NOFA's do you have out now on

1 products? On procurement?

2 MS. GILDART: The playground mat and local

3 government amnesty day public education NOFA's are out.

4 MEMBER JONES: Are out.

5 MS. GILDART: The green building product

6 procurement is not.

7 MEMBER JONES: So they're out. We don't

8 know how much of a request is going to come in in

9 excess of available dollars there. Is that the intent,

10 to use --

11 MEMBER EATON: No. The issue is a very

12 simple basic fairness one to another member of this

13 Board. That's the bottom line. The bottom line is an

14 ambiguity that exists. He has a leave of absence, and

15 there's a legitimate issue, if you read the transcript

16 several different ways, and as a courtesy to a fellow

17 Board member, you simply take the 300,000, and that

18 goes out with the NOFA. Then we sit when he gets back

19 here in four weeks -- he's going to be here in four

20 weeks irrespective of what the outcome of his own

21 personal ambitions happen to be, and we sit down and

22 figure out what his intent was.

23 MEMBER JONES: That's what I thought I was

24 getting to.

25 MEMBER EATON: Yeah. Not when you raise the

26 board to 300 to 481 --

1 MEMBER JONES: But we're not there.

2 MEMBER EATON: -- and you don't get
3 there.

4 That was the motion proposed -- not the motion proposed,
5 but that was the recommendation, and that's not what's
6 going to happen.

7 MEMBER JONES: As to what reply motion
8 was is what you meant. That was their interpretation, not
9 mine.

10 MEMBER EATON: Uh-huh.

11 MEMBER JONES: Okay.

12 MEMBER EATON: And there are some other
13 products that aren't out, aren't there? There are other
14 NOFA's, are there not?

15 MEMBER JONES: She said there's two out
16 right now.

17 MEMBER EATON: But you mentioned there
18 were two that aren't out.

19 MS. GILDART: The green building procurement is not out. We
20 are still --

21 MEMBER EATON: How about Mr. Jones'?

22 MS. GILDART: The septic tank one? We are --

23 MEMBER EATON: Is that out?

24 MS. GILDART: -- waiting to hear -- no.

25 MEMBER EATON: No. So that's another one
26 that's not out. So that wasn't the complete laundry

1 list; correct?

2 MS. TRGOVICH: There are five grant programs
3 which were approved by the Board for tire fund
4 allocation for fiscal year 98/99. Two are out. Three
5 are waiting. One of those three is before you today.

6 MEMBER JONES: So what we're trying to
7 figure out is, if this goes out at 300, then we have --
8 what I want to know is, then we have the discussion in
9 four weeks after the election after Wesley's back to
10 see what his intent was?

11 MEMBER EATON: That was the proposal the
12 staff came to me with, and I said that would be fine.
13 I think that's fair. Now that I see it's somewhat that
14 people are hedging, I'm not -- and that's not where
15 we're going to go. At least from my standpoint.

16 MEMBER JONES: I'm not sure I don't have a
17 problem with that.

18 MEMBER EATON: I mean, as a courtesy you
19 ought to kick it all over, all 481 till he gets back.
20 That's truly the fair way, but if you want to split the
21 bath water and try and get some things moving, then you
22 do the 300.

23 MEMBER JONES: Actually, I don't have a
24 problem with kicking it he over, because whatever we
25 don't allocate had goes into remediation.

26 MEMBER EATON: Absolutely.

1 MEMBER JONES: So that works for me.

2 MS. TRGOVICH: I would like to make one --

3 MEMBER EATON: Make that motion.

4 MS. TRGOVICH: -- one request of staff --

5 MEMBER EATON: I'll second that motion. You
6 want to make that motion?

7 MEMBER JONES: No. I'll hold off.

8 MS. TRGOVICH: One request of staff. With
9 five grant programs, we have staggered the cycles on
10 all of these programs. If we -- if the Board intends
11 for this program to move forward at some point and we
12 wait until November to have the discussion, we are
13 pushing that cycle back to where we will be before you,
14 probably with two, if not potentially three, programs
15 in late spring. Then we will have very limited time if
16 we are able to allocate all of those funds to move
17 through a reallocation process. So if it's your intent
18 to undertake this program at all, we would strongly
19 request that you consider at least moving a portion of
20 those funds out today.

21 CHAIRMAN PENNINGTON: So we can't include
22 procurement in this funding cycle, so we either have to
23 do 481, 300, nothing, but we can't include, as I would
24 interpret my motion to have said, that I intended it to
25 be -- to have the local government procurement in this,
26 and if that's -- we can't do that, then we have to look

1 at it another way.

2 MS. TRGOVICH: Let me just explain
3 from staff's prospective. It's not that we can't. It's
4 that it's apples and oranges, and you would really need
5 to undertake a separate grant program. The criteria of
6 that for evaluation would be completely different.

7 To ask a question of legal, if it's
8 the Board's desire to put this off until November, at
9 least have the discussion when Member Chesbro returns,
10 would it be possible to put the NOFA out saying up to
11 481? Start the cycle. Then you can have the subsequent
12 discussion. Would it be possible to start down the path
13 that way?

14 MEMBER JONES: Can I ask a question
15 before she answers? Why can't it just say 300? And then
16 if you have a request to go over 300 and we determine how
17 we want to spend it, then we deal with that at that
18 point.

19 MR. CHANDLER: Let me ask -- before you
20 clarify that -- Caren, you indicated that the green
21 building procurement, that's targeted towards local
22 governments.

23 MS. TRGOVICH: Local governments.

24 MR. CHANDLER: Would there be any
25 utility in having discussion of taking a certain
26 percentage of this allocation -- Mr. Eaton suggest 181 or

1 something -- and augmenting that solicitation, which is
2 less apples and oranges and let local governments
3 supply procurement under that program and keep 300,000
4 for these commercialization R & D efforts to go forth?

5 MS. TRGOVICH: That can certainly be done.
6 The reason why we are not proposing that is because
7 this title is for approval of this grant program and
8 the criteria for this grant program. This item is not
9 noticed to reallocate.

10 MR. CHANDLER: Would the criteria for the
11 other one be more applicable to entertaining proposals
12 from local governments who want to come in with
13 procurement solicitations?

14 MS. TRGOVICH: Correct.

15 MR. CHANDLER: That's another way to
16 consider it possibly.

17 CHAIRMAN PENNINGTON: How much is the green
18 building?

19 MS. TRGOVICH: 150,000 in the green
20 building.

21 CHAIRMAN PENNINGTON: So if we took 150 out
22 of this, that would be 300,000 into that one.

23 MS. TRGOVICH: The one thing I would point
24 out is that we are recommending a maximum grant award
25 of \$80,000 here. I would suggest that there be a
26 minimum of four grants that could be funded at the

1 maximum amount, which would be 320,000.

2 CHAIRMAN PENNINGTON: Well, if you took 150,
3 that would leave you 320. Actually it would leave you
4 130 -- 330.

5 MS. TOBIAS: Let me just say on the NOFA
6 issue, it would be legal's preference to start out at
7 the highest amount that you want, as opposed to trying
8 to go up, because that's the maximum. It's going to
9 come back to you for award anyway. You can award
10 whatever you want under that rather than doing it at
11 some number that you're not quite sure of and then
12 having to come back and amend that. So I think it
13 would be better to do whatever you think is the
14 maximum, and then even if your record reflects that you
15 think it's going to be X amount.

16 CHAIRMAN PENNINGTON: I guess my feeling
17 would be that I'd prefer to move the 150 out of this
18 program to the green building procurement, and maybe
19 since we haven't even started on that RFP that we can
20 generate it more in a liking to what we think that
21 Mr. Chesbro's, so when he gets back, we've got money
22 there for that project, and we can scale it to what
23 his -- if you agree with his thinking, we can scale it
24 to that.

25 MS. TRGOVICH: We can certainly put the NOFA
26 out at that 320,000, or whatever that level is. All I

1 would like to say is, because of the title on the
2 agenda today, you cannot reallocate to green building.
3 It will simply be an amount of money that you will need
4 to reallocate in a subsequent --

5 CHAIRMAN PENNINGTON: But we can reallocate
6 it though at the next noticeable meeting; correct?

7 MS. TRGOVICH: Correct.

8 CHAIRMAN PENNINGTON: Well, I'll float that
9 motion, that we fund this at \$320,000 to the Tire
10 Product and Processing Promotion Grant Program.

11 MEMBER EATON: Second that motion.

12 CHAIRMAN PENNINGTON: Resolution 98-322 at
13 the amended level of \$320,000.

14 MEMBER RHOADS: I just have one question.

15 CHAIRMAN PENNINGTON: Sure, Mr. Rhoads.

16 MR. RHOADS: This is not jeopardizing the
17 150,000 that's set aside for the green building
18 program?

19 MS. TRGOVICH: No. That 150,000 was
20 allocated last April.

21 MR. RHOADS: And so when your NOFA that will
22 go out, it will have two pieces that -- not this one,
23 but the future one -- one for the green building, and
24 then one for the procurement?

25 MS. TRGOVICH: And it's possible that those
26 could be one and the same. We are in the process of

1 developing what that green building -- it is a
2 procurement element. I would guess that they're going
3 to be very similar, if not the same program.

4 CHAIRMAN PENNINGTON: Any further
5 discussion?

6 The chair moves and Mr. Eaton seconded. If
7 there's no further discussion, will the secretary call
8 the roll.

9 THE SECRETARY: Board Member Eaton.

10 MEMBER EATON: Aye.

11 THE SECRETARY: Frazee.

12 MEMBER FRAZEE: Aye.

13 THE SECRETARY: Jones.

14 MEMBER JONES: Aye.

15 THE SECRETARY: Rhoads.

16 MEMBER RHOADS: Aye.

17 THE SECRETARY: Chairman Pennington?

18 CHAIRMAN PENNINGTON: Aye. Motion carries.

19 Move to Item Number 8, Consideration of
20 Construction Proposals for the Field Demonstration
21 Project Using Waste Tires in Levy Construction and
22 Repair.

23 AGENDA ITEM NUMBER 8

24 CHAIRMAN PENNINGTON: Ms. Trgovich.

25 MS. TRGOVICH: Good afternoon, again.

26 CHAIRMAN PENNINGTON: This is your day,

1 isn't it?

2 MS. TRGOVICH: It's my day.

3 This item will be presented to you by

4 Roger Formanek of the Board staff -- by Martha Gildart

5 and Roger Formanek of Board staff. We also have

6 representatives from Chico State here today as well.

7 Just a reminder, this is not -- we are not

8 seeking approval for a new contract. The contract, or

9 interagency agreement has been in place for some time.

10 The interagency agreement was broken into two phases.

11 We are seeking approval for the end of Phase 1 in order

12 to commence with Phase 2, which is the actual

13 construction.

14 MS. GILDART: As Caren said, this item deals

15 with conclusion of Phase 1 in which we are considering

16 the mix design and the construction plan and the site

17 selection. Phase 2 will then be the actual

18 construction.

19 In April of '97 the Board had allocated

20 \$36,000 for a feasibility study to look at the

21 technical and economic merits of using waste tires and

22 levy construction and repair. That feasibility study

23 contract was awarded to the California State University

24 Chico's Research Foundation. The results of the

25 feasibility study were brought to the Board in August

26 of '97. Criticisms were made of the test methods used, .

1 and subsequent disagreements with the contractor
2 required Chico to go back and do some retesting. Those
3 results were then sent out for peer review by the Army
4 Corps of Engineers. The Board of Reclamation and the
5 contractor here with the waste Board, Geocentec. Those
6 comments were incorporated into the conclusions of the
7 report and then used to found the basis of the
8 construction contract that you're acting on today.
9 The Board had allocated \$609,000 for the
10 entire two-phase construction contract. What we have
11 today is the representatives from the CSU Chico, where
12 they will be making their recommendations.
13 I would like to thank Chico for its
14 responsiveness to staff's request to move this project
15 forward quickly, to allow a possible construction to
16 occur yet this fall. We still are waiting for a final
17 permit action from the Board of Reclamation before we
18 will know fully whether the levy repair can go forward.
19 So at this point I'd like to introduce
20 Rovane Younger, who is chair of the construction
21 management department at Chico, and he will be assisted
22 by Richard Holman, who is the professor of engineering.
23 MR. YOUNGER: Thank you, Martha,
24 Chairman Pennington and Board members.
25 I would like to point out that Executive
26 Director Chandler, I believe, mentioned the recycled

1 tire -- recycling conference tomorrow in San Jose.
2 I'll be making a presentation expanded from this at
3 that conference tomorrow about this project.
4 We just want to very briefly give you some
5 overview of what we have done to this point and point
6 out to you that we were, too, in Phase 1 of this
7 research contract to select a site, to test the site to
8 meet the criteria, to make a mix design and determine
9 the constructibility of the project.
10 Early on here, and I will cite these
11 statistics in this data later in the presentation, too,
12 but I will point out to you that for this cutoff all
13 trench would be approximately 18 inches wide, 25 feet
14 deep, and this pilot project will be 1800 feet long.
15 The amount of that that will use the equivalent of
16 waste tires of 99,000. That translates to about
17 290,000 tires a mile, and to bring that a little closer
18 to home, the slurry wall cut-off project that is
19 currently building built along the American River is
20 approximately 1.8 miles long, and that would use one
21 and a half million tires.
22 To give you an overview of the site
23 selection process, Rich Holman will lay that out.
24 MR. HOLMAN: We're going to bounce back and
25 forth a little bit here, so I'm going to talk about
26 site selection.

1 And late in May we were given the go ahead
2 to find ourselves a site to build a slurry cut-off
3 wall, and that proved to be a pretty undaunting
4 challenge here. We started doing exactly what anybody
5 else would do. We started knocking on doors and making
6 phone calls, and we started with all of the various
7 water districts in Northern California. We were
8 looking for a site that was centrally located,
9 somewhere between Chico and Sacramento. We wanted to
10 find a levy that had obvious signs of seepage. We
11 wanted to find a levy that we didn't have to do a
12 cut-off wall that was going to be 70 or 80 feet deep.
13 We wanted to find something reasonable, and we didn't
14 want to find a levy that was so structurally damaged
15 that we'd have to rebuild the levy to do the project.
16 So we had some criteria we set forth, and we
17 started knocking on doors and making phone calls, and
18 we started with the water districts, the Western Canal
19 Water District, the Levy District Number 1, Levy
20 District Number 9, Butte Water District, and, you know,
21 as many water districts as we could get ahold of and we
22 found that there was kind of a misunderstanding of what
23 is a slurry cut-off wall layer.
24 So we're getting a little skepticism or a
25 little reluctance there, and at that time we kind of
26 shifted our focus and said, let's go talk to the

1 engineers that design all the work for these levy
2 districts. One phone call to Von Geldern Engineering
3 in Marysville. Three hours later I had a call back,
4 and he said, "I have a site for you. This guy has
5 obvious signs of seepage. He actually has some crops
6 next to this levy that are damaged and are dying."
7 So we took a ride out there. This is
8 (indicating) about five miles south of Gridley, so
9 maybe 45 minutes north of here.
10 We took a look at the site. If you look to
11 the east of this site you actually do see damaged crops
12 and trees. Let me show you an aerial photograph here.
13 I don't know if you could see the colors there, but the
14 dotted red line represents the actual levy itself that
15 is damaged. That green dotted line out there, that
16 whole area is dying trees. You have a copy of this in,
17 I think, Exhibit A in your binders, there.
18 It was our -- I mean we did a little bit of
19 geotechnical investigation at this time. Just visually
20 did some soil classification and determined that most
21 likely this water was flowing underneath that levy. At
22 this point we needed to get some agreements from the
23 land owners that said, "Yeah, go ahead, and let's drill
24 some holes in the levy, and let's find out is it really
25 structurally capable or incapable, or is, in fact, that
26 water migrating through this levy, or is it coming from

1 the Feather River."

2 So we needed to drill some test soil
3 boring logs, and to do that we needed some agreement from
4 the land owners, which was a whole different experience for
5 us as well, because there's a lot of parties involved,
6 reclamation boards and all the CEQA documentation that has
7 to go with it

8 So all let Rovane talk a little bit about the agreements
9 with the land owners

10 MR. YOUNGER: Our tag team

11 Let me back this out just a little. As
12 you can see from the aerial that is in your report, there
13 is pretty apparent damage, and this was an ideal site,
14 but it did have a problem involved with it, because the
15 property owner was in litigation with the canal
16 operators. I can tell you that we did pursue
17 agreements with both property owners and the canal
18 operators, have received, which is Attachment A and B,
19 hold harmless agreements to keep us, all parties
20 involved in this research project, out of any
21 litigation. In addition to being named as additional
22 insureds for the insurance companies with all
23 parties -- with the property owner and the canal
24 operators.

25 Permitting requirements for this project
26 was somewhat complex, and the red line that you see in the

1 aerial photo is the canal levy, which is under the
2 authority of the Department of Water Resources. In
3 addition to dealing with water where there is wildlife,
4 we had to get a Department of Fish and Game 1600
5 agreement. We also had to get a nonimpact,
6 noninvolvement issues from the U.S. Army Corps of
7 Engineers and the Water Quality Board. We have all of
8 those permits now, and all of those permits recognize
9 our agreements with the property owners and the canal
10 operators. At least, that's what I am told just as of
11 yesterday afternoon.

12 We then, after we received our agreements,
13 which was in the latter part of July, we then moved
14 down to the site to do some testing and Rich will have
15 some boring logs to show you.

16 MR. HOLMAN: This will be real quick here.

17 There are two things that are significant about what
18 I'm going to show you, and I don't know if you can see
19 that. I'll try and zoom in on that.

20 You see two triangles in the middle of the
21 screen. We drilled four-inch holes down 30 feet. I
22 was trying to determine at what point did we find an
23 impermeable level where water wasn't going to migrate
24 any deeper than that. Those two triangles represent
25 water. We found free water flowing horizontally at
26 about 12 feet and about 18 feet deep. Pretty good

1 indication that you water flowing from this canal
2 underneath the levy over into the fields. So we do
3 have exactly the perfect situation to build a slurry
4 cut-off wall.
5 I kept drilling down because I wanted to
6 make sure that water wasn't going to go any deeper than
7 that. From about 25 to 30 feet we had good, clean clay
8 soil, which clay is generally considered an impervious
9 soil. So in my opinion, we had a perfect case, a
10 perfect location to build a slurry cut-off wall. The
11 nice part about it is you build a slurry cut-off wall
12 about 25 feet deep, you don't require specialized
13 equipment. You know, most of these slurry cut-off
14 walls going in on the American River and up in
15 Marysville are 70 feet deep requiring custom
16 construction equipment.
17 So we can prove this technology. We can
18 prove this product and this project without getting
19 into extraordinary costs of specialized equipment. So
20 from these soil borings we did three borings just to
21 make sure we didn't have any localized situation going
22 on, and we pretty much confirmed we had the same
23 conditions across the entire project.
24 After that we have to do mix design. We
25 have to go back and determine how much soil, how much
26 cement, how much bentonite, how much rubber tires to

1 accomplish this project. We couldn't start that
2 process until we could confirm this was a viable site.
3 We had to take some of this soil back to a laboratory
4 to do mix designs so you're actually using a soil from
5 this site to confirm that it is a viable site.
6 And I'll let Rovane talk about mix design.

7 MR. YOUNGER: There are three criteria that
8 we tried to make with the design of a slurry, or
9 concrete mix.

10 One is that it meet the criteria set by the
11 U.S. Army Corps of Engineers for compressive strength
12 of soil, cement, clay, mixture.
13 And two that it meet a permeability
14 requirement. That is, its ability to stop the flow of
15 water. I can tell you that the Corps of Engineers
16 permeability requirement is no more than one times ten
17 to the minus seven centimeters per second. To
18 translate that into our terms, that says for an 18-inch
19 wall, it will take about 2.9 years for a drop of water
20 to go from one side to the other. So that's mostly
21 slow.

22 Then the third criteria we needed to make
23 was that this mix be workable, and that is to say that
24 it will act something like a concrete or slurry mix.
25 We have confirmed that -- our efforts were
26 to get the largest chip size of tire we could get so

1 that mix is competitive with current methods of making
2 cut-off slurry walls, and yet is workable and buildable
3 without specialized equipment with common equipment,
4 and we have accomplished that also.

5 I have additional -- to give you an idea
6 here on the content of the mix design, these are the --
7 the additives are set aside, are the pie charts that
8 are pulled out. That is bentonite clay, cement, a
9 retarder that allows you to work with the mix a bit
10 longer, and the tire chips, and these percentages that
11 we're showing over there is a percentage of cost of a
12 total installation, and as you can see there, the
13 installation using a two-inch minus chip is about
14 six percent of the total cost of the wall. We deem
15 that at this point to be very competitive.

16 I will take one moment. I'm just going to
17 finish with the monitoring, but I'll just cover that
18 right now.

19 The Phase 4 of this -- or Phase 3 of this
20 contract is to set up a monitoring system on the land
21 side of the wall to prove that it has done what we were
22 trying to establish, and that is a series of monitoring
23 wells to take water tests for two things. One, to see
24 that we have, in fact, stopped the water. And, two, is
25 to see that there are no leachates that come out of the
26 system that may be harmful to wildlife. The fact is

1 that all of the materials that we're using, rubber
2 tires, bentonite clay, and cement -- I shouldn't say
3 rubber tires, but I should say vulcanized rubber -- are
4 all common materials that are used in fish hatcheries.
S So we don't expect any kind of a problem with it, and
6 they are currently undergoing toxicity tests for the
7 Department of Fish and Game to once again prove that
8 there is nothing harmful.

9 MR. HOLMAN: I told Rovane I wouldn't come
10 unless I get to do a show and tell.

11 When this ingredient, soil, bentonite,
12 cement, and rubber tires are actually mixed and dried
13 or cured, you can hardly tell that there's rubber tires
14 in here. There's about 25 percent of the products in
15 there is rubber tires, 25 percent by weight.

16 One of the requirements Rovane talked about
17 is that this product has to have a certain compressive
18 strength. In other words, if I try and break that
19 cylinder on both ends and I keep pressing it together
20 (indicating) . The Corps requires it be somewhere
21 between 15 PSI and 200 PSI. That right there broke,
22 and it looks like this after I break it, and understand
23 please that I did break this on purpose and not by
24 accident. You can see the rubber tire ingredients in
25 there. I'll be glad to leave this here with you if
26 you'd like. This broke at 66 PSI, so we're well within

1 specification on compressive strength.
2 The next thing we're doing now is beginning
3 the permeability testing. Inclination is with the
4 amount of clay soil we have at this site -- clay is
5 generally considered one times ten to the minus seven.
6 We just happen to have lenses of sand with water
7 migrating right through them. Pretty easy to stop
8 that.
9 So we think we have an ideal site, and,
10 again, the mix design, we're well along with that, and
11 they should start permeability testing. We hope
12 they're mixing right now.
13 With that, I guess that really is where
14 we're at right now. Contractibility wise, we've looked
15 at the site. We would envision -- One of the
16 requirements, if you look at the long line in the
17 middle pointing down there, that is actually slurry
18 cut-off wall. One the requirements, that levy is only
19 about 15 feet wide, and we recognize that a contractor
20 may want additional room to work. One of the options
21 is to take about the top -- two or three feet off the
22 top of that levy and gain another 10 to 15 feet area
23 for the process. They're going to excavate 18 inches
24 wide, 25 feet deep, and they'll truck it over out into
25 the field next to it. So you break the clods up into
26 smaller pieces. You're going to add the rubber tire,

1 chunks of rubber tire, and then you're going to mix
2 grout into that. That grout is water, cement, and
3 bentonite clay. With that, you're going to work that
4 in. You're going to truck it back up to the site and
5 stick it right back in the hole, so that you're working
6 all the way along the levy. You don't open up all 1800
7 feet at once. You're excavating on one end of the
8 trench, and you're placing it back in the trench at the
9 other end.

10 That's kind of the way we see it. So, you
11 know, we're all good to go on this end and kind of
12 enjoying the process, and we don't really foresee any
13 great problems. So with that, from our end, we'll open
14 up to questions.

15 CHAIRMAN PENNINGTON: Questions?

16 Mr. Eaton.

17 MEMBER EATON: Absolutely. Thank you very
18 much.

19 Just a couple of questions. I think it's a
20 great project that you're doing. I just have a couple
21 of questions.

22 Where are you getting your tires from?

23 MR. YOUNGER: Where are we getting the tires
24 from?

25 MEMBER EATON: Yeah. You know, we have a
26 lot of extra tires here that we deal with on a regular

1 basis. I was wondering -- hoping that we might be able
2 to get them from one of the places that we're trying to
3 remedy. So I think it's just a pretty basic question.

4 MS. GILDART: We are trying to work with the
5 permitting enforcement division's remediation program
6 to see if any of those tires could be made available at
7 the site.

8 MEMBER EATON: So does that mean we are
9 going to get them from in state and from one of our
10 piles?

11 MS. GILDART: In state from one of the piles
12 that we're paying to clean up.

13 MR. FORMANEK: Under the terms of the
14 agreement, we're on the hook to supply the tires.

15 CHAIRMAN PENNINGTON: Mr. Frazee?

16 MEMBER FRAZEE: The standard practice in a
17 wall such as this would be bentonite only without any
18 re-enforcing material, if that's what the tires do?

19 MR. YOUNGER: Two types. That's one type.
20 The other as is going along the American River is
21 cement bentonite. It's essentially the same that we're
22 doing here. We're just putting in tire chips in the
23 mix. So both types are used.

24 MEMBER FRAZEE: Will there be any controlled
25 section of this that would be just that mix without the
26 tires so you can compare the tires to see how they

1 perform?

2 MR. YOUNGER: We hadn't planned that because
3 the cement bentonite is a -- that's a standard, and
4 we've got a mile and an eighth of it over here in the
5 American River. I mean, that is a standard. What
6 we're -- what the objective of this research project
7 is, is to prove the constructibility of mixing tire
8 chips in here, and utilizing them this way.

9 MEMBER FRAZEE: Would the end result include
10 an economic study on the cost of this versus, say,
11 standard bentonite wall?

12 MR. YOUNGER: Absolutely, and it is our
13 objective, and that's what some of the overheads that I
14 was showing you, it is our objective -- that's one of
15 the primary things, that it must be competitive for it
16 to be adapted throughout -- you know, throughout the
17 industry by other are agencies. Namely, the Corps of
18 Engineers, Department of Water Resources. Agencies
19 like that.

20 MEMBER FRAZEE: One of the advantages that I
21 could see of this is the re-enforcing ability of the
22 tires. On the other hand, that might tend to give the
23 wall some flexibility which may be a plus or a minus,
24 but does it have the potential for opening fissures in
25 the wall to let water flow through it? That's the
26 questions that I guess we're going to answer in this.

1 MR. YOUNGER: Those are some of the things
2 that we'll be monitoring of this during one-year
3 monitoring period after construction.
4 You're right on, Mr. Frazee. Some other
5 things that we're finding that we hadn't expected, you
6 saw the test cylinder. One of the things observed as
7 we tested this cylinder, it appears to have much
8 greater elasticity, which you might expect with rubber
9 chips in there, which that brings in other uses. We're
10 already looking and thinking about other uses such as
11 thrust block box for piping systems and things like
12 that.

13 MEMBER FRAZEE: Sure.

14 CHAIRMAN PENNINGTON: Any additional
15 questions?

16 MEMBER JONES: Just one.
17 We had, in Martinez when we talked about
18 this item, I think it was determined that when that
19 thing is broken you felt that this was far superior
20 because it never broke all the way through. There was
21 always that clinging, and that's -- is the Corps of
22 Engineers still excited about this project?

23 MR. YOUNGER: They're very interested and
24 they're looking at it, but they're kind of being -- the
25 individual engineers within the Corps of Engineers are
26 very interested, but as an agency they're kind of

1 standing back looking and saying, show us.

2 MEMBER JONES: Okay.

3 MR. RHOADS: I have just one question.

4 CHAIRMAN PENNINGTON: Yes, Mr. Rhoads.

5 MR. RHOADS: Did you talk about the American
6 River? What section of the American River?

7 MR. YOUNGER: It's between -- if you want to
8 see -- the process is actually going on now. It's
9 between Watt Avenue and Howe Avenue, along that
10 section. The process that you're seeing is very near
11 identical to what we'll be doing.

12 MEMBER FRAZEE: They did large sections of
13 Garden Highway three or four years ago with the same
14 process. In that case, they mixed the bentonite in
15 transit mix trucks, and that's why I was interested in
16 this mixing it on the ground and adding a soil to it.

17 MR. YOUNGER: It's more economic to do it on
18 the ground. Any time you handle it again, put it in a
19 truck, and that's more expensive.

20 CHAIRMAN PENNINGTON: Okay. Any additional
21 questions?

22 Mr. Chandler.

23 MR. CHANDLER: Caren, what's the timing on
24 this again? When are we going to be performing this
25 work?

26 MS. TRGOVICH: We're hoping for a fall

1 construction, late fall construction. I think as the
2 gentlemen from Chico indicated, as well as Martha and
3 Roger, that will be contingent upon approvals by the
4 Board of Reclamation.

5 Regardless, what's needed is approval of
6 Phase 1 so that we have a construction plan that we're
7 ready to go with, whether or not Board of Reclamation
8 approves -- Roger help me out here. Is it a waiver of
9 the November 1 construction deadline?

10 MR. FORMANEK: Yeah. The Reclamation
11 Board's permit prohibits construction activities during
12 the flood season. The flood season officially starts
13 November 1. So this is an issue that's being
14 negotiated right now, and I think we're getting mixed
15 signals from the Reclamation Board. The engineering
16 staff is telling me that they anticipate an early wet
17 season, and they are pretty much opposed to any special
18 dispensation granting construction in the wet season,
19 but then I understand that there are some other signals
20 coming from the Reclamation Board as well.

21 It seems, at this point, it's uncertain
22 whether we can build during the flood season, but with
23 certainty we'll be able to build outside of the flood
24 season.

25 MR. CHANDLER: My only point, Mr. Chairman,
26 was being a resident there myself, having experienced

1 the Break, the Olinda Break, and the Olivehurst Break,
2 I can tell you that every local water district
3 official, board of supervisor member, and, of course,
4 representatives to our state assembly and legislature
5 are very concerned about the state of levies up there,
6 and I would strongly encourage that we coordinate with
7 this project, whether we kick off in the fall or the
8 spring, every bit of media and press contact we can, at
9 least with those local officials to let them know of
10 the good work of this Board in trying to not only look
11 at this engineering application, but also deal with a
12 solid waste issue.

13 I just think that there's, you know,
14 been some such near experiences these last several
15 years with this problem, that levy repair in general,
16 that section of the state is very acute, and I think we
17 could garner some real good coverage if we coordinate
18 well.

19 So suffice to say, I'll just be working
20 with Caren and John to see what kind of media coverage we
21 can garner out there at the beginning of the project when I
22 think you can actually see the application as well as when
23 its all finished up, and it looks just like, you know, a
24 regular levy again.

25 CHAIRMAN PENNINGTON: Good. Okay.
26 Any other questions?

1 MEMBER JONES: Mr. Chairman?

2 CHAIRMAN PENNINGTON: Mr. Jones.

3 MEMBER JONES: In honor of former Board
4 Member Janet Gotch, who brought this idea to the Board
5 at a committee meeting many -- couple years ago, I'd
6 like to move Resolution 98-321, consideration of
7 construction proposal for field demonstration project
8 using waste tires in levy construction and repair.

9 CHAIRMAN PENNINGTON: Okay. I'll second
10 that.

11 It's been moved and seconded. If there's no
12 further discussion, will secretary call the roll.

13 THE SECRETARY: Board Member Eaton.

14 MEMBER EATON: Aye.

15 THE SECRETARY: Frazee.

16 MEMBER FRAZEE: Aye.

17 THE SECRETARY: Jones.

18 MEMBER JONES: Aye.

19 THE SECRETARY: Rhoads.

20 MEMBER RHOADS: Aye.

21 THE SECRETARY: Chairman Pennington?

22 CHAIRMAN PENNINGTON: Aye. Motion carries.

23 I think we need to take a break here for

24 about five, ten minutes.

25 (Whereupon, a break was taken.)

26 CHAIRMAN PENNINGTON: Okay. Let's gets back

1 to work here, folks.

2 We're now moving to Item Number 9.

3 AGENDA ITEM NUMBER 9

4 CHAIRMAN PENNINGTON: Consideration of
5 Sears, Roebuck and Company Protocol for Complying with
6 the Rigid Plastic Packaging Container Certification
7 Requirements.

8 Ms. Trgovich.

9 MS. TRGOVICH: Good afternoon,
10 Member Pennington and other members.
11 This item will be presented by John Nuffer.
12 He will be briefly describing the basis for Sears
13 coming before you today. The bulk of the presentation
14 will be made by a representative of Sears and of
15 Latham & Watkins. So once John concludes his brief
16 introduction, the presentation will be turned over.

17 MR. NUFFER: Thank you, Caren.

18 Good afternoon, Mr. Chairman, Board members.

19 My name is John Nuffer with the waste prevention and
20 market development division.

21 This item asks you to consider a request
22 from Sears related to the Board's rigid Plastic
23 Packaging Container certification process. Sears is
24 requesting that the Board approve a special protocol
25 for complying with the RPPC certification requirements.
26 Specifically Sears wants to reduce the universe of

1 products that they certified to a representative
2 sample. They also want to extend the certification
3 time frame. The chief counsel for Sears made this
4 request of you at your last meeting, and you directed
5 us to place this item on the agenda.
6 I'll describe the highlights of the
7 protocol, and a Sears representative will present the
8 protocol in detail. They will be available to answer
9 your questions.
10 Sears faced several problems in providing
11 information to the Board within the allowable time
12 frame, and that was 60 days, plus a 30-day extension we
13 granted them, and that 90-day time frame ends today.
14 First, they couldn't easily obtain records
15 from 1996 and didn't know whether records existed.
16 Second, as a retailer they were somewhat
17 removed from the manufacture and packaging of products.
18 So it wasn't easy to obtain the requested packaging
19 information, even for '97 or '98.
20 And third, being a large company, they sell
21 many products that are packaged in RPPC's, and it
22 wasn't physically possible to gather the necessary data
23 from their vendors in time.
24 In order to start the process, Sears
25 inventoried several of its Southern California stores
26 in August of this year. At that time Sears identified

1 about 270 products that were currently being sold in
2 rigid plastic containers. Basically they're proposing
3 to randomly select 30 percent of those products, or 81
4 products, to check for compliance. They also propose
5 to send letters to the manufacturers of these products,
6 make follow-up phone calls, send a second letter, and
7 call a second time if necessary. They will submit the
8 required information to the Board no later than
9 December 14th of this year, and if information for 1996
10 is actually not available, they propose to substitute
11 1997 or 1998 data.

12 That concludes my brief presentation. I
13 think Rick Zbur from Sears would like to speak.

14 CHAIRMAN PENNINGTON: Okay.

15 MR. ZBUR: Mr. Chairman, members of the
16 Board. Good afternoon. My name is Rick Zbur, and I'm
17 a partner in the Los Angeles office of
18 Latham & Watkins, and I'm here today on behalf of my
19 client, Sears, Roebuck and Company.

20 On September 17th, Rick Kulevich, senior
21 counsel to Sears, appeared before the Board to comment
22 on and provide information regarding the difficulty
23 that Sears faces responding to your certification
24 request under the rigid Plastic Packaging Container
25 program.

26 Although there are significant questions

1 regarding where the California legislature intended
2 this program to apply to merchandisers like Sears,
3 especially given the difficulty that merchandisers face
4 in obtaining information necessary to comply with the
5 Board's information request, Sears does have a strong
6 corporate commitment to recycling programs and has
7 indicated a commitment to work with the Board and its
8 staff to determine the best ways for the state of
9 California to meet its recycling and waste reduction
10 objectives. We, therefore, very much appreciate the
11 Board's willingness to consider an alternative protocol
12 to provide information to the California Board.
13 As Mr. Kulevich explained several weeks ago,
14 as a nationwide retailer, Sears does not manufacture
15 any of the products that it sells. Instead, Sears
16 purchases these products from a large number of
17 manufacturers and distributors and then sells them to
18 end users as a merchandiser.
19 Because Sears is a merchandiser and does not
20 manufacture any of its product, it does not possess
21 packaging information for its product as part of its
22 day-to-day record keeping. Additionally, because Sears
23 purchases products already within their packaging,
24 Sears similarly has very little ability to control
25 recycling rates of products that it sells.
26 Sears is different from other retailers,

1 given the large number of products that it sells under
2 the Sears or Craftsman brand names. Although a few
3 other retailers, and we count only four or five from
4 what we can tell from the list. It looks like it's
5 Vaughn's, Tiffany, Kroeger, and Spiegel received
6 certification requests. These were generally
7 supermarket or grocery store chains, which we suspect
8 did not have anything close to the number of products
9 sold under private label brand names.

10 The large number of products sold by Sears
11 under its private labeled names, even though it doesn't
12 manufacture these products, is one of the reasons why
13 Sears has a difficult time complying with these
14 programs, and I think it sets Sears apart to a certain
15 extent.

16 As the Board is aware, when the California
17 legislature adopted the Rigid Plastic Packaging
18 Container program in October 1991, the legislature made
19 the program applicable only to manufacturers. That is
20 the language that is in the act. In the regulations
21 implementing the program, the Board included a
22 definition of manufacturer that included, quote,
23 "distributors" when a container label did not specify
24 the entity that manufactured the product. The term
25 "distributor" in common usage refers to wholesalers,
26 and although Sears does not engage in any wholesale

1 activities, presumably because of the distributor
2 definition, Sears was received a certification request
3 under the program.
4 As Mr. Kuberka, Sears director of
5 environmental affairs who is here with me today and has
6 come from Chicago, will tell you, since July 1998 Sears
7 has spent countless hours and resources attempting to
8 respond to the Board's certification request. Because
9 of the special circumstances Sears' large number of
10 private label products presents and the fact that Sears
11 does not Crack product packaging information, Sears
12 simply was not and is not able to provide information
13 requested within the time period allotted by this
14 Board.
15 Rather than debate the applicability of the
16 RPPC request to Sears at this time, and because Sears
17 is committed to working with the Board on its waste
18 reduction and recycling objectives, Sears has proposed
19 an alternative protocol pursuant to which it will use
20 its best efforts to obtain information from its
21 manufacturers and distributors for representative
22 sample of products sold in RPPC's in Sears retail
23 establishments.
24 Without waiving concerns regarding
25 applicability, Sears would like to work with you and
26 your staff to help provide better data regarding the

1 special circumstances and challenges faced by
2 merchandisers who do not manufacture their products
3 with the hopes that the Board will take the information
4 to tailor regulations at the end of this process.
5 We very much appreciate the hard work of
6 your staff and the Board's willingness to consider the
7 alternative protocol that Sears presents today. We
8 understand that the staff report raised some concerns
9 about setting a precedent if you approve this
10 alternative protocol. We point out in this case that
11 there are special circumstances. Namely, that Sears is
12 a merchandiser that doesn't manufacture any of its
13 products, that it must go two to three levels back to
14 obtain this information. A 60-day and 90-day time
15 period, and I think you'll see why in a minute when
16 Mr. Kuberka explains sort of what we've been doing over
17 this -- what Sears has been doing over this 90-day
18 period was not enough time, puts Sears in a special
19 category.
20 If you think of the other companies that are
21 also retailers, and, of course, we've just been doing
22 this visually. I mean, there may be some others that
23 we didn't catch. We look at that list. We see
24 Vaughn's, Tiffany's, Kroeger, and Spiegel.
25 Spiegel is primarily a retailer of apparel.
26 We don't think that they have anywhere near the number

1 of products that Sears does, and it's hardware and
2 automotive products that it sells.
3 Vaughn's and Kroeger are supermarket
4 companies. Most of what they're facing really are
5 private labels with respect to beverage containers, and
6 that is much more limited than I think what you'll see
7 Sears has had to face.
8 And Tiffany and Company, the last time I
9 went into a Tiffany's I didn't see a whole lot packaged
10 in plastic. So I doubt that they have a whole lot that
11 they are going to be dealing with.
12 I would like to -- With that I'd like now to
13 introduce Mr. Robert Kuberka, who's with us from
14 Chicago, who will discuss the activities that Sears has
15 engaged in over the past couple months to provide the
16 information pursuant to the Board certification
17 request, as well as the elements of the proposed
18 protocol.

19 MR. KUBERKA: Thank you, Rick.
20 Good afternoon. My name's Robert Kuberka,
21 and I am the director of environmental affairs with
22 Sears, Roebuck and Company, out of Hoffman Estates
23 outside of Chicago, Illinois.
24 I appreciate the opportunity to address the
25 Board regarding Sears' proposal to provide information
26 in response to the Board's RPPC certification request,

1 pursuant to an alternative protocol. We appreciate the
2 hard work your staff has dedicated to working with us
3 to develop this protocol and request its approval
4 today.

5 Sears has a long history of corporate
6 commitment to recycling efforts. On a voluntary basis
7 Sears has implemented its own recycling program. That
8 is, in the first six months of this year, 1998 alone
9 for California, we resulted in recycling 6 and a half
10 million pounds of cardboard, 5.6 million hangers, a
11 half million auto batteries, 236 tires -- 236,000
12 tires, 490,000 tools, and over 100,000 light bulbs and
13 florescent tubes.

14 Because Sears is committed to promoting
15 recycling efforts and assisting the Board with its
16 program, we have worked hard both internally and with
17 the staff to respond to the Board's RPPC request. We
18 engage in this process with the hope that the Board
19 will have a better information, that it will use to
20 consider its amendments to its regulations, that will
21 address the concerns raised by companies who do not
22 manufacture but sell a large number of products on the
23 private labels, for example, Craftsman or Sears'
24 private labels.

25 In proposing this protocol, Sears has two
26 objectives. First, Sears would like to assist the

1 Board in obtaining information regarding the recycled
2 content actually used in the state of California.
3 Sears believes the alternate protocol will provide
4 valuable information on a representative group of Sears
5 product packaging.

6 Second, Sears hopes that the protocol will
7 help educate the Board regarding the difficulties that
8 we face and gathering and providing information of this
9 type into the state of California.

10 Because Sears is not a manufacturer, it does
11 not track packaging information in the ordinary course
12 of business or as a manufacturer would. Because a
13 product manufacturer must necessarily keep track of
14 packaging information, because it is part of the
15 manufacturing process. Sears purchased products which
16 are sold in its stores fully packaged, and there is no
17 independent business reason to track packaging
18 information.

19 Providing information to the Board entails
20 identifying which of the thousands of products it sells
21 or sold in RPPC based on visual observation and then
22 identifying and requesting information from product
23 manufacturers. These product manufacturers in turn may
24 need to request such information from container
25 manufacturers. Assembling this data from a multitude
26 of manufacturers and provide it to the Board is a

1 difficult and costly task that would not be possible in
2 the short period allocated to Sears by the Board.
3 A number of you may be asking yourselves,
4 why has it taken almost three months for Sears to cover
5 this point in which it's this alternative protocol, and
6 what were we doing in the interim period?
7 Let me give you a flavor of what we've gone
8 through and the level of effort that Sears has engaged
9 to get to this point where we're at today.
10 Sears has literally spent hundreds of hours
11 in staff, consultant, and attorney time. It has
12 participated in approximately 50 meetings and
13 conference calls on average every business day. It has
14 been challenging and time consuming determining how to
15 best respond to your request.
16 Your request for certification arrived at
17 our Sears headquarters the second week in July.
18 Because it was addressed to someone who left Sears in
19 the early '90s -- we believe in '91 or '92 -- it was or
20 forwarded to various departments before ending up in
21 environmental affairs, my department, the third week of
22 July. In the last week of July, Sears put together a
23 team comprised of environmental affairs, legal, our
24 merchandise buyers, and the Sears laboratory and met
25 during the last week of the July and periodically
26 thereafter to understand whether Sears had in its

1 possession product packaging information necessary to
2 comply with the Board's certification request.
3 Very quickly, Sears determined that it could not
4 identify which products it sold were packaged in
5 RPPC's. Therefore, in early August Sears made --
6 retained Fluor-Daniel GTI, which is an outside
7 consultant that we use, to provide recommendations on
8 how to comply with the requirements of the program. In
9 early August, these consultants, Fluor-Daniel GTI,
10 surveyed a Kansas City store to obtain a general
11 understanding of the type of products they may be
12 contained in these RPPC's.
13 Based on the Kansas City visit, the consultant
14 developed a protocol and training package to allow
15 Fluor-Daniel GTI staff and a subcontracted inventory
16 specialist group to perform an inventory of
17 representative stores in California. In mid-August,
18 four representative formats, all located in Torrance,
19 California were selected to their inventory to identify
20 those products sold in RPPC's. These included a Sears
21 department store, a Sears automotive center, a Sears
22 product service center, and an Orchard Supply Hardware
23 store. Because Orchard Supply is a separate subsidiary,
24 Orchard products were later excluded based on the
25 advice of your staff.
26 Within a few days of the outside inventory

1 of all four stores, the consultant filed a
2 comprehensive report to Sears, identified almost 1400
3 products that may be sold in RPPC's. In late August our
4 consultant went back to the Kansas City store to engage
5 in a QAQC procedure with the inventory list, literally
6 visually reviewing each of the approximately 1400
7 identified products to begin eliminating those products
8 that did not meet the precise definition of
9 the RPPC.

10 Over the past four weeks Sears and
11 its consultants have made additional visits to the
12 Torrance locations to redefine and reclassify product
13 listings to eliminate products that were not capable
14 of multiple reclosure, products that do not meet the
15 volume requirements set forth in regulations, or items
16 that are not RPPC's because the packaging is not part
17 of the product itself. For example, a plastic tool
18 carrying case. In September we began a dialogue with
19 your staff to try to understand how to provide
20 information pursuant to the Board's certification
21 requests.

22 We are very appreciative of the hard
23 work and commitment your staff has made to working
24 with us to identify elements of the protocol that we
25 would propose to you for your approval.
26 I understand the protocol was included in

1 your packets. As you can see, the first two steps of
2 the protocol have already been accomplished. Upon your
3 approval, Sears will commence with Step Number 3 of the
4 proposal. This will entail Sears randomly selecting a
5 30 percent of the products for which we will provide
6 information to the RPPC's. We have selected this
7 number to give to you and your staff a reasonable
8 representative sample of Sears products, as well as to
9 provide information to the Board at a reasonable time
10 within the context of Sears manpower resources. Even
11 with these 80 products, we estimate that the manpower
12 resources to engage in the followup and the tracking of
13 this program will be substantial.

14 Steps 4 through 7 involved a procedure for
15 Sears to contact product and container manufacturers
16 and distributors to contain RPPC information on the
17 30 percent group of products. Step 4 requires that on
18 or before October 16th of this year Sears will mail a
19 letter to such manufacturers and distributors, request
20 RPPC information on the relevant products.

21 Fifth. If two weeks after the mailing Sears
22 has not received the requested information, it will
23 assign a Sears associate to telephone call each
24 nonresponsive party during the week of November 2nd,
25 1998.

26 Six. If four weeks after the mailing Sears

1 has not received the requesting information, it will
2 send a second letter to each nonresponsive party on or
3 about November 13th.

4 Seventh. If six weeks after mailing Sears
5 has not received the requested information, it will
6 assign Sears associate to telephone call again each
7 nonresponsive party during the week of November 30th.

8 Eighth. Although Sears will request 1996
9 packaging information from manufacturers and
10 distributors, if such manufacturers and distributors
11 cannot provide '96 information, Sears will request and
12 provide to the Board product packaging information
13 based on the best available information either from the
14 years 1997 or 1998.

15 Ninth. If the manufacturers and
16 distributors do not provide product packaging
17 information at all within the six-week period despite
18 if Sears' efforts to procure it, Sears will eliminate
19 the product from the Sears response to the Board and
20 submit information for those products for which
21 responses had been obtained from the product
22 manufacturer or distributor. The response will be
23 mailed to the Board on or before December 14th of this
24 year.

25 Tenth. Sears will group the responses by
26 the product categories provided by the Board -- Board

1 staff and transmit the RPPC certification forms that
2 were submitted to Sears by the actual product
3 manufacturers and distributors. Sears will also
4 provide a report regarding the costs in manpower
5 expanded to provide the information included in
6 response.

7 We believe that your approval of the
8 protocol today will have a number of benefits for the
9 agency. It will allow you evaluate the cost and
10 manpower that private label merchants must face to
11 gather information to comply with these types of
12 certification requests. It will also show you to
13 gather information on a representative group of Sears
14 packing or to estimate whether waste reduction and
15 recycling objectives are being met.

16 As part of our report to the Board, we
17 intend to quantify these issues and propose
18 modifications to your program based on what we have
19 learned through this protocol.

20 We thank you very much for your time and
21 your willingness to consider this proposal.
22 I will be happy, or Rick will be happy to
23 answer any questions that you have.

24 CHAIRMAN PENNINGTON: I think Mr. Rick Best
25 wants to address us. I think we'll here him and then
26 have questions after that.

1 MR. BEST: Thank you, Mr. Chairman and
2 Board. Rick Best with Californians Against Waste.
3 I appreciate the presentation by Sears staff and I want
4 to begin by complimenting them for coming to the Board.
5 I think it's definitely very admirable for a company to
6 come to the Board and express their situation and try to
7 reach resolutions. So we appreciate that.

8 That being said, we have some
9 concerns with regards to the proposal that's been put
10 forward, and certainly the first one being the precedent
11 setting nature of this. I think the Board needs to
12 carefully consider in terms of the process that's going
13 to be established because this potentially could be
14 used, not only in this program, but arguably -- someone
15 may argue that this process should be used in other
16 Board enforcement programs. For example, local
17 governments obviously are under the gun for meeting AB
18 939 compliance. So we want to make sure that whatever
19 policy the Board establishes that its thoughtful and
20 consistent with the Board's other programs.

21 That being said, I think the three
22 issues that we have with the proposal that's been put
23 forward, the first being the 30 percent sample. The
24 statutory requirements is for each container
25 manufacturer each container manufactured to comply, and
26 so having a

1 30 percent sample isn't representative of the entirety
2 of the products.
3 Now, if the Board wanted to establish, you
4 know, a system where maybe the first 30 percent were to
5 come in first, and then ultimately information for
6 those other products would come in at a later date,
7 considering the time constraints, I could understand
8 that as perhaps a process, but to say that only
9 30 percent are going to be sampled, we don't see that
10 being reflective of the statutory requirements.
11 The second issue with regards to the random
12 sample, we would suggest that that should be something
13 that is to be done by the Board as opposed to the
14 company. It's required to comply with the law.
15 And then the third issue is with regards to
16 Step 9, if information couldn't be obtained, then those
17 products would be dropped from the list. I think for a
18 lot of manufacturers, if they didn't provide
19 information to the Board, they would be found to be not
20 in compliance, and in this situation if they aren't
21 providing information, that's dropped from the list of
22 products that are part of the survey. So we have
23 concerns with that issue as well.
24 So those are our issues. We recognize that
25 Sears has a situation, and I think it's appropriate for
26 the Board to try and come up with a process that

1 facilitates the ability of Sears to comply with this
2 law, but we have some strong concerns, particularly
3 with the 30 percent provision that this isn't provided
4 for in statute to allow only 30 percent demonstration
5 of compliance of the law.
6 Thank you.

7 CHAIRMAN PENNINGTON: Thank you. Any
8 questions of Mr. Best or --

9 MEMBER JONES: I have a couple for Mr. Best.

10 CHAIRMAN PENNINGTON: Okay.

11 MEMBER JONES: And then a couple for Sears.
12 You helped write this law; correct?

13 MR. BEST: I personally did not. I started
14 in 1991. That was when this law was written, but our
15 organization certainly did, yes.

16 MEMBER JONES: The intent of this law was to
17 promote recycled content materials being on the shelves
18 of stores; right.

19 MR. BEST: Yes.

20 MEMBER JONES: Because I'm encouraged when
21 you say, you know, try to work out something. Try to
22 work out a schedule. Do something. They appreciate
23 it, Sears. You said you appreciated at least they came
24 forward. I'm looking at the same thing, trying to
25 figure out how best do we get Sears to make a
26 commitment to put recycled content material on the

1 shelves. I honestly would rather see they're shelves
2 stocked with that stuff as opposed to, you know,
3 spending 100 grand to do an audit on what the
4 containers look like. I'm just not sure how we're
5 going to get there. I just wanted to get a little hard
6 check on that and just see, 'cause I think that's what
7 you guys --

8 MR. BEST: Ultimately our interest is
9 wanting to see recycled products being used and sold in
10 the marketplace. That being said, I mean, the law
11 has -- I mean, this was for 1996. The Board has a
12 responsibility under its reenforcement provisions to
13 see that it fulfills that responsibility. So I think
14 you have to balance both of those in what you decide
15 today.

16 CHAIRMAN PENNINGTON: Any additional
17 questions of Mr. Best?
18 Mr. Eaton.

19 MEMBER EATON: Not at this time.

20 MR. RHOADS: I'd like to have staff respond.

21 MS. TRGOVICH: Just to summarize, Rick
22 raised three points. The first one was with respect to
23 the 30 percent sample, and the precedent setting nature
24 there.
25 The second one was how to conduct the random
26 sampling.

1 The third was in terms of dropping the
2 nonresponsive products.
3 I think that as staff is concerned, we felt
4 that given the large volume of products that Sears was
5 potentially having to first and foremost identify the
6 product manufacturers, which could be multiple, and
7 then pursue the container manufacturers, either
8 directly or through their distributor chain or
9 otherwise, that this would be representative amount.
10 We had worked with Sears to determine in
11 what product categories the product samples would be
12 selected from, and we felt that this would give us a
13 good number, and it would give us a higher number than
14 most of our product manufacturers. In fact, the large
15 majority of the product manufacturers that received the
16 certification are actually submitting information for.
17 Remember, we are constantly getting certifications into
18 Price-Waterhouse, and certifications are coming in for
19 a number of products, and this 30 percent would give us
20 well above the average number of products for which
21 each certification is being submitted for.

22 MR. RHOADS: On that point, the accusation
23 that the law doesn't allow us that flexibility to do
24 that 30 percent.

25 MS. TRGOVICH: That's something that I would
26 need to defer to legal, but if I could respond to the

1 other three points.

2 MS. TOBIAS: It depends on what side you're
3 on.

4 MS. TRGOVICH: With respect to the
5 randomness of the sample, we had discussed with Sears
6 an approach to be used in terms of the listing of
7 products and selecting the samples from that listing.
8 I don't think that any of us are wed to a particular
9 approach, and I would be very happy to discuss with
10 Sears, looking at having staff perform the random
11 selection, either by providing them with the --
12 providing us with the list and we go, you know, every
13 five products or three products or whatever. So I
14 think that's something we can work on.
15 With respect to Step 9 in dropping the
16 nonresponsive products, that was an issue that we
17 raised with Sears ourselves. We ended up backing away
18 from that for purposes of the agenda item because it
19 was our goal to get information to the Board under this
20 compliance period at the earliest date possible, and
21 given that they may not find out until the end of
22 November, very early part of December that a product
23 is, in fact, nonresponsive, that it would seem not to
24 serve the purpose of the timeliness of the response to
25 have them then substitute a product on the list. That
26 would then extend out the time period in which they

1 would be submitting their compliance information to us
2 by potentially another four to six weeks. So what we
3 had indicated to them was if the Board was amenable
4 that that may be something that the Board would request
5 down the road, but that it was our recommendation to
6 get as timely a response in as possible.

7 CHAIRMAN PENNINGTON: Mr. Jones.

8 MEMBER JONES: No. No.

9 CHAIRMAN PENNINGTON: Oh, I'm sorry. Go
10 ahead.

11 MR. ZBUR: Mr. Chairman, I just wanted also
12 just to add to what your staff provided.

13 With respect to the first point on the
14 30 percent issue, the one thing I wanted to remind the
15 Board was that the -- your certification requests only
16 went out to a subset of products -- manufacturers in
17 the 500 selection. In any case, this is not
18 inconsistent with the fact that you are actually trying
19 to demonstrate compliance with the law based upon a
20 subset of all of the manufacturers out there. So I
21 pointed out already that from a legal prospective,
22 you've already taken a step down the road in the way
23 you've designed your certification process in terms of
24 allowing for compliance based upon a sample.
25 The second issue with respect to selecting
26 the random sample, Sears doesn't have any problem with

1 actually allowing your staff to select the sample. If
2 you'd like to do that, we'd be happy to give you our
3 product list and allow them to do that, or work out
4 anything that I think the Board would find, or the
5 staff independently would like us to do, and I think
6 Sears is amenable to that.

7 The third is on the issue of the dropping
8 the nonresponsive products. Our first proposal was
9 really more along the lines of five percent of our
10 products. Your staff came back and asked us to do
11 20 percent, and we agreed to do that. Then when your
12 staff actually asked us -- raised the concern about
13 dropping them, we actually indicated instead of
14 sticking with the 20 percent sample and actually
15 extending the time frame, that we would rather actually
16 go out to a 30 percent sample and actually see what
17 was -- what we came back with was the goal of trying to
18 get the 20 percent.

19 And so that's sort of the evolution of what
20 happened in this process based on the discussion with
21 your staff, and that was based in part on the manpower
22 concerns that we have in doing this.

23 The one thing I will add is that I think I'd
24 like to point out to the Board is that the cost of
25 complying -- doing this process, what they've already
26 done, and probably are going to be doing is assuming

1 and hoping that the Board will approve something along
2 this line, probably exceeds the costs of the -- of a
3 penalty, so I do want to point out that Sears is trying
4 to act as a good corporate citizen. We came to you and
5 your staff very early on in this process when we
6 identified a problem, and rather than basically saying,
7 you know, we're not going to -- you know, we can't do
8 this and walk away from the table. We decided to --
9 sears, I think, made a decision to expend resources to
10 try to provide information to the Board within a time
11 frame possible. Frankly, part of what we're hoping
12 today is that we actually get some sense of where the
13 Board is before we go down this process, because it
14 will probably end up costing them more than what the
15 potential penalties are, but Sears does have a strong
16 corporate commitment to recycling efforts and would
17 like to do something that is helpful and helps the
18 Board meet its objectives within the -- what is
19 reasonable for a company of this size and the
20 challenges that this company faces.

21 CHAIRMAN PENNINGTON: Ms. Tobias, do you
22 want to tell us the legal?

23 MS. TOBIAS: What I'd like to talk about is
24 a little bit broader than what Board Member Rhoads
25 asked. He asked specifically about the 30 percent
26 sample. I'd like to talk just a little bit more

1 broadly about the action of the Board today. So I
2 don't know if you'd like me to do that now or if you'd like
3 to finish up some of your questions.

4 CHAIRMAN PENNINGTON: What's your
5 pleasure?

6 MEMBER JONES: I'd like to ask my
7 questions --

8 CHAIRMAN PENNINGTON: Sure.

9 MEMBER JONES: -- and then I could be
10 found out that I'm wrong, so that always works as far as a
11 strategy.

12 MEMBER EATON: I'm glad you're not rigid.

13 MEMBER JONES: There's a couple of things
14 that concern me from the standpoint of when the -- the
15 products that are in the Sears stores that we're talking
16 about, the name Sears appears on what percentage of them?
17 100 percent, 50 percent, 30 percent?

18 MR. KUBERKA: Are you talking about Sears
19 and Craftsman or just Sears?

20 MEMBER JONES: Sears and Craftsman.

21 MR. KUBERKA: I'd estimate probably about
22 25 to 30 percent.

23 MEMBER JONES: Okay. So 25 to 30 is --

24 MR. KUBERKA: If you throw apparel out,
25 then it's probably upwards of probably 40 percent.

26 MEMBER JONES: Okay. So that's reasonable

1 But one of the things that was said, and it was said in
2 a discussion I had with Mr. Zbur yesterday on the
3 phone, and it was also reiterated today, was that Sears
4 had very little control over the packaging, and I think
5 the day that you all came out at the last Board
6 meeting, I had made a comment that that's what we have
7 to change, because you do have control over packaging.
8 And I'm wondering, if the Board were to go along with
9 the sampling, would Sears be willing to go into a
10 partnership with the Board where we would be able to
11 provide a forum with -- we don't know all the answers,
12 but if Sears feels like they have no control over
13 packaging, then I think we need to talk about packaging
14 and the potentials there for not only increasing your
15 profits, but also being able to take our mandate to the
16 next level, which is, if people aren't buying the
17 stuff, then all the programs that you listed where you
18 recovered, you know, 6,500,000 pounds of material and
19 half a million batteries, and all those other things,
20 that's the collection side, and that's all well and
21 good, but if we don't have markets for that material,
22 then it just becomes -- it goes into warehouses, and
23 part of this legislation, I think, was written in an
24 attempt to get the 800-pound gorillas -- which Sears
25 falls in that category -- to be aware of that part of
26 this cycle of closing the loop. This is kind of hard

1 because issues have been raised as to, do we want to
2 set a precedent that could be very painful. Part of
3 the precedent -- I mean, I wouldn't mind raising the
4 precedent and going along with this proposal if I could
5 also encourage Sears to enter a partnership with us.
6 We talked about packaging with your -- whoever your
7 corporate people are that are in charge of the
8 procurers of products.
9 In packaging workshops that we've done, real
10 little things like how you load the box could save us
11 20 percent. That's money that would be in your profits
12 as opposed to the guy that's selling you the box. I
13 think that carries our mission on and makes it easier,
14 for me anyway, to deal with an issue like this, if we
15 can take it to the next level with that commitment from
16 Sears. And I'm not sure that you guys are prepared to
17 say yes or no, but if you if did say yes, it would be a
18 heck of a lot easier for me.

19 MR. KUBERKA: I think you're right. I'm not
20 in a position right now, in my capacity within Sears.
21 What you're referring to is what we call the buying
22 organization. They have the most power within Sears.
23 I would physically have to go back to each one of the
24 buyers with these these products that we've listed here
25 and sit down with them and explain the regulations and
26 explain what we want to achieve, what you all want to

1 achieve, what we want to achieve from an environmental
2 sort of realm, but I'm real open to any type of
3 partnership activity and more than willing to go back to
4 the parties that be, back at Hoffman Estates and start
5 the ball rolling on this.
6 I'm sorry to go off on a tangent. This has
7 been looked at in this past, and just to give you a wild
8 for example -- I know it's not plastic, but for example,
9 basketball or soccer ball. We took the packaging off that
10 product, put it up on the shelf for just merchandising.
11 Sales drastically went down. The customer wants
12 something. They visualize something on
13 the shelf, and that's what they want to buy. I'm just
14 throwing it out, so I'm not sure from the buying
15 organization, plus the manufacturer what the product
16 wants to look like when it's out there.

17 MEMBER JONES: Right.

18 MR. RHOADS: If I could just. The
19 problem that we have, sir -- I've only been on this Board
20 -- this is my second meeting, and my first meeting we had
21 to give some exemptions to local governments because they
22 didn't meet their mandates, and now it looks like we
23 might do that again, and that may cause a lot of other
24 companies to come in and request the same thing. We're
25 getting close to this goal 2000, and sometimes
26 we're going to have to lay a very, very hard line with

1 folks when you have a statute that says you have to do
2 this and this and this. We just can't ignore that
3 statute.

4 You know, Sears is unique, but Sears is
5 unique. That's why we're interested in it. I go to
6 your automobile shop. I buy a lot of your plastic
7 products. I see all of the packaging, and some type of
8 partnership, I think, would be a good way of going
9 down.

10 I've got some other questions, but I'll turn
11 it back.

12 MR. ZBUR: If I could just supplement
13 Mr. Kuberka's response as well.

14 I know that Mr. Kuberka and I have
15 participated in a number of meetings. We've had
16 countless of them internally on this issue, and in
17 response to Mr. Jones and, I think, Mr. Eaton's
18 questions from the last time, we actually discussed
19 whether or not it would be possible at this point to
20 make this type of commitment to actually specify
21 outright that packaging be recycled at some level and,
22 frankly, the difficulty in doing that at this point is
23 that Sears doesn't even really know what the
24 packaging -- what the recycled content is of the
25 packaging of the stuff is that it currently sells. So
26 it's hard to sort of make those types of commitments

1 without even having the data upon which folks that are
2 in a position to do that, and part of the reason why we
3 suggested moving forward with this process is that it
4 will allow us to get some more information regarding
5 what the recycled content is of their various products
6 that we're selling now, at least in 1996, and will give
7 us more of an information to do that. I know there has
8 been a corporate commitment to work with this Board,
9 and I think while Sears is not in a position to make a
10 commitment on that type of specification today, they're
11 clearly willing to enter into a partnership to look at
12 that, and, in fact, to modify whatever is in this
13 protocol with your staff, if you think that additional
14 information would help in terms of tailoring a program
15 over the long run.

16 You know, we had a very short period
17 of time to work with your staff on this. Sears, as you
18 know, spent most of the month of August and early
19 September trying to even understand, literally visually
20 out of the thousands of product sales what are in the
21 packages, and we've been working the last couple of
22 weeks with your staff on trying to develop this
23 protocol.

24 But we'd be open, frankly, to, you
25 know, eliciting more information in the protocol with
26 the idea of doing something that makes sense. I mean,

1 frankly, from a prospective of a member of the public
2 in the state of California, I'm not sure if the best
3 resources are which in any luck Sears is spending a lot
4 of time having inventory specialists go survey
5 representative stores and gather data, what's in the
6 packages, rather than doing something else. So I
7 understand sort of where you're headed. I guess what
8 we're trying to do is say, look, we're here to work
9 with you. We, frankly, think that there are real
10 issues regarding whether or not the legislature ever
11 intended this program to apply to an entity like -- a
12 merchandiser like Sears. It is not a manufacturer of
13 the products, and, frankly, this whole process raises
14 issues regarding whether or not you're obtaining the
15 same information from Sears as you are from the real
16 product manufacturers, whether or not you're putting
17 the burden on the entity that has the ability to make
18 the technical decisions about what part of its products
19 should be -- can use recycled content versus others.
20 You know, it's hard for an entity like Sears, which
21 just buys the products and packages to do that, but,
22 you know, in Sears has made a corporate commitment to
23 work with you, and I think it's evidenced by the
24 expenditure they've already made and their willingness
25 to move forward, and we would be happy to go back as
26 part of this learning process and even modify the

1 protocol if you think that would be helpful in
2 addressing other issues.

3 CHAIRMAN PENNINGTON: Are you through,
4 Mr. Jones?

5 MEMBER JONES: I just have one more. Just
6 one quick one.

7 I appreciate that, and I understand the
8 merchandise, or I don't understand it, but I've got a
9 little idea that you need to be able to use packaging
10 to your advantage to merchandise. That's not what I
11 was coming from. I was talking -- and it wasn't also
12 just on those items on the list. It was more of a
13 discussion with Sears about transport packaging, about,
14 you know, how products move, how do you keep them? You
15 know, how do you preserve the integrity of the products
16 you're going to sell? What are the options out there
17 that maybe are beneficial as well as beneficial to us.
18 So it's more of an information exchange that I think is
19 really -- I was driven to say it, because of the
20 discussions where Sears feels they don't have any
21 control over these things. That's, I think, our
22 biggest job is to show people they do have control over
23 those things. You are the 800-pound gorilla. You tell
24 somebody this was what I want to see it in. It will be
25 in there. And believe, me with the quantity of
26 material that you buy, if you specify the integrity of

1 the packaging, then what they have to do is provide you
2 a price. Otherwise there's ten other people out there
3 that will. That's the line I want to -- you know,
4 that's why I want to go, 'cause that makes it easier to
5 work with you on this, but at the same time be able to
6 take this to a higher level without it costing you
7 money, but it may be actually making you money, and if
8 it doesn't, then maybe we learn something.

9 MR. KUBERKA: Can I add a point to that,
10 too?

11 I've been with Sears about two and a half
12 years right now. When I came in the environmental
13 affairs department was basically reactive to a point
14 that they were putting out flyers. I was brought in to
15 realign the services, start some programs -- some
16 proactive programs.
17 Where we are right now -- and I'm throwing
18 this out -- we have an environmental policy statement
19 that was written back in May of 1994. It was never
20 endorsed by upper management. I'm in the process now,
21 we're going to present to Arthur Martinez, who's the
22 CEO, in the next two and a half weeks on a new
23 policy -- an environmental policy. Once that's
24 endorsed by upper management, that will put all the
25 burden and responsibility on each business that's
26 within the Sears realm, and once that happens, I will

1 be actually interactive on a day-to-day basis with the
2 business strategies of each one of the businesses. And
3 this is something from a teamwork approach that I can
4 bring to them and say, this is where we're going. This
5 is where we're heading.

6 I think as a retailer, Sears is ahead of the
7 curve on this. We're not the leading edge, but we want
8 to be out there, and we are truly an environmental
9 company. We want to do the right thing.

10 MEMBER JONES: Can I ask one more question?

11 CHAIRMAN PENNINGTON: Sure.

12 MEMBER JONES: What I'm hearing and believe
13 me I've worked in big companies where sometimes the
14 guys at the top don't always agree with -- actually,
15 you could look around this place, as such has been
16 indicated more than once today. If that meeting with
17 your CEO where you are hoping to make strides in that
18 type of change within your organization, would it be
19 beneficial to -- I don't even know if we could do this
20 legally -- but I'd like this to be also delivered as
21 one of your points when you talk to that CEO and say,
22 "Look, this state" -- which I'm sure Sears does an
23 awful lot of business in -- "wants to work with us, but
24 they want to work with us on a -- not only this issue,
25 but on a broader issue that, you know, they think there
26 is benefit to Sears."

1 Is that something that could be introduced

2 in that meeting that you're comfortable with?

3 MR. KUBERKA: Actually, I think we're ahead
4 of that curve right now. Arthur's already given us his
5 blessing. Now it's just that we're putting the final
6 packaging together. What we're looking for is external
7 resources on how we're going to facilitate the role out
8 of the overall implementation program.

9 MEMBER JONES: Oh, okay.

10 MR. KUBERKA: And actually one of the items
11 is product development. So that will be within that.
12 So that will be one of my sort of monitoring points or
13 pulse for each business.

14 CHAIRMAN PENNINGTON: Mr. Eaton.

15 MEMBER EATON: I think Mr. Rhoads had a few
16 more questions.

17 MR. RHOADS: I just had one other
18 question -- well, I may have a couple more, but one
19 right now is, what's the impact -- this is probably
20 more directed toward staff -- of using '97 -- using the
21 year '97 in the protocols, if they can't provide the
22 information for '96 they'll substitute '97 data?

23 MR. SMITH: I think we'd all like to get
24 data that is as current as possible, and having '97
25 data is better than '96 we think, and '98 would even be
26 better. One of the disadvantages of asking companies

1 to go back a couple years is that the data isn't
2 current, and we -- having current data, I think, is
3 important if we're planning for the future.

4 MR. RHOADS: So you see -- You don't see it
5 as a disadvantage of using '97 data if the '96 data is
6 not available?

7 MR. SMITH: No.

8 MS. TRGOVICH: It will potentially raise an
9 issue down the road when the Board considers, and we're
10 looking at a November 5th date to bring back the
11 summary reports from Price-Waterhouse on this program.
12 I think the question needs to be considered in two
13 parts.

14 You asked the question, and John responded
15 with respect to, to know as much as we can, the more
16 current the data, the better to form our decisions, but
17 if Sears doesn't have anything better than -- if they
18 don't have '96 data to take to support a '96
19 certification process, then we want the next best
20 thing. If it doesn't exist, we cannot fabricate it.

21 CHAIRMAN PENNINGTON: Okay.

22 Mr. Eaton.

23 MEMBER EATON: I also would let go the
24 sentiments, and I'll get to it later on, but a few of
25 my questions -- I'd like to correct a small little kind
26 of point in your presentation.

1 You said there's no reason for Sears to keep

2 this information, but for one, and that's this law. So

3 I think you should whether we'll debate that issue.

4 MR. ZBUR: I said no independent business

5 reason.

6 MEMBER EATON: I thought you did, but I

7 wasn't sure.

8 MR. ZBUR: The point I was trying to make

9 was just that a product manufacturer has to know what

10 packaging his product is going into. I mean, there's

11 records there that are easy to look to generate Sears

12 because it already buys in the package. That's all I

13 was saying.

14 MEMBER EATON: I would also beg to differ a

15 little bit that it's not as simplistic as you just go

16 out and order the stuff.

17 By the way, does Sears have any involvement

18 with the warnings they put on their products?

19 MR. KUBERKA: That's a good question. I'm

20 not sure. I would say they do, but if you want, I can

21 get back and research that.

22 MEMBER EATON: No. The point I'm just

23 trying to make is, I don't think it's just a simple

24 question where you go out and buy 85,000 packets of

25 sheers and you say, you know, "That's what I want." I

26 mean, there's an actual development that takes place in

1 between the buyer. It may not get down to some of the
2 specs of the packaging and some of the other kinds of
3 things, but there is involvement, and therefore,
4 because there's involvement, there's a body of law that
5 holds you accountable in various instances, and I don't
6 make that point just because I want for the record
7 indicate it's not just as simplistic as if there's
8 nothing there for it.

9 MR. KUBERKA: I know we do have a lab that
10 works for each product, though. I'm assuming that
11 happens, but I don't want to confirm to that.

12 MEMBER EATON: Because I would imagine that
13 if I had a series of items on the shelf, and either the
14 packaging and/or something about them kept falling off
15 the shelf due to complaints either from your sales
16 personnel, your managers, your store managers -- are
17 you still doing A, B, and C Sears stores?

18 MR. KUBERKA: Yes, we are.

19 MEMBER EATON: Yeah, I thought so. Those
20 complaints would work their way back up, and all of a
21 sudden you'd look and you'd say, "Something's not right
22 here. The basketball that comes in plastic that looks
23 sort of triangular on the bottom that falls off the
24 shelf because the specs aren't, you know, at the right
25 degree of angle."

26 So I do believe there is some culpability at

1 least with regard to the input, but I guess my question
2 is, have you found any information yet about '96? I'm
3 not asking you to disclose the information here. I'm
4 asking have you found any information.

5 MR. KUBERKA: No, we haven't. We just
6 complied the list, and we're ready for the random
7 sampling at this point.

8 MEMBER EATON: Is that because the
9 individuals whom you do business with have said they
10 don't have the information? And I'm not going to hide
11 ball. What I'm trying to lead to is that I don't to
12 anyone through unnecessary exercises if the
13 information's not going to be there. That's not, I
14 think, what's echoed here on this Board, that
15 sentiment -- at least from my standpoint. What I do
16 wonder is, do you have any information?

17 MR. ZBUR: The process that Sears engaged in
18 literally was starting out at the stores and visually
19 going in and identifying what off the shelves was in
20 plastic package, and basically taking a master list
21 that started out with about 1400 products and culling
22 it down by simply going back to the Kansas City and
23 Torrance stores to look at the packages and culling it
24 down. Literally that process, I think, was completed
25 about two weeks ago. So as of you weeks ago, we had
26 the 270. You know, that's where we started from. So

1 in the last two weeks we actually, in fact, have been
2 working with your staff on developing this protocol and
3 have not gone out to the buyers and to the product
4 suppliers to try to obtain that information. That
5 doesn't independently exist in Sears records.

6 MEMBER EATON: The other issue, and I think
7 it was raised by Mr. Rhoads, and I would disagree with
8 staff's response, not because I don't think it was
9 valid. I do believe 97/98 information is valid, but we
10 have a situation here where we have a '96 compliance in
11 products in '96. The question for me is, basically,
12 and being in and respecting to the firm that you're
13 from, that if I were to do a '97 and '98 comparison for
14 a '96, I think that grounds could exist by others who
15 would want to come in here and make an evaluation that
16 perhaps a '97 and '98 information used for '96
17 compliance is not either fair nor valid, because why,
18 and irrespective of -- and I'm very sympathetic, and
19 I'm leading someplace, so I just hope you bare with
20 with me. So I do believe that, yes, the more recent
21 information is valid, and hopefully it get picked again
22 in '97 and '98, because you should keep that
23 information, by the way. If you've ever read the law,
24 you got to keep it for least a couple of years and
25 perhaps more, but I do believe at least that wouldn't
26 you believe that that would be a difficult situation or

1 the Board to justify, irrespective of your own
2 position?

3 MR. ZBUR: I guess what I would suggest to
4 the Board is that you already have made the decision
5 that you're going to somehow certify your compliance
6 with the law based upon a representative sample of
7 product manufacturers. I would suggest that one option
8 would be that the Board just drops out any product that
9 the '96 information is not attainable on, and we
10 provide still the '97 or '98 data, because I think your
11 staff would find that valuable, because if that's the
12 only data that exists. That's why we've suggested
13 providing that, not just dropping anything out where we
14 don't get '96 data, but frankly, the only reason we did
15 it, is that if it just doesn't exist, we can't, as I
16 think Ms. Trgovich said, we just can't manufacture it.
17 We're going to do our best to get the '96 data.

18 MR. RHOADS: I understand that, but the
19 regulations were done in '94, or when did we do
20 regulations on this

21 MS. TRGOVICH: I believe it was earlier than
22 that.

23 Was it '94. The package may have been
24 completed in '94.

25 MR. ZBUR: With all do respect -- and I
26 don't really want to debate -- I mean, we didn't come

1 here really to debate the applicability of this, but
2 when you look at the language of the act, it applies to
3 manufacturers. You look at your regulations, and it
4 applies to distributors. Sears in the common useage of
5 either of those words is neither of those two things.
6 So, you know, I think under these
7 circumstances, we would argue, that, you know, you may
8 say, "There's regulations that are out there that you
9 should have been complying with."
10 I think what we would argue if we were ever
11 in an enforcement posture -- and that's not why we came
12 here today to do -- is we would say, you know, this was
13 never intended to apply to Sears in the first place.
14 It was -- even your regulations are unclear about
15 whether it applies to a merchandiser, and we're making
16 good faith efforts to set those issues aside and really
17 do our best, and that's -- you know, that's the spirit
18 in which we come today, and, you know, there are some
19 questions regarding whether or not this really does
20 truly apply to Sears.

21 MEMBER EATON: And I would agree with you
22 that there are a number of valid points in
23 consideration that Sears has made. I think we have
24 also made those, and so, therefore, we are in a
25 situation where there are very valid points. The
26 question is, how do we then resolve each of those, and

1 I think one of the ways, and I think you made the point
2 that you're going to probably exceed any kind of
3 enforcement kind of action or penalty if this protocol
4 were even followed to any degree irrespective if it's
5 approved or some variation therefore. So I guess my
6 question really becomes one, is that is this one of
7 those situations where we can have a meeting of the
8 minds wherein if, for some reason, a reasonable
9 interpretation could be made that 97/98 information
10 could be used, but that subjects this Board to things
11 which are not really a serious concern, and I hope you
12 realize that really isn't your concern. That's our
13 concern. It affects you, but it isn't really your
14 concern. That may be take better posture for each of
15 us to look at is because if there is no information
16 available in some case if we follow the strict letter
17 of the law, you'd be in noncompliance, and, therefore,
18 a black mark, a black eye, whatever you want to
19 describe it as, I don't think that helps anyone, quite
20 frankly.

21 Having said that, however, perhaps one of
22 the things that I would recommend, and much like a
23 settlement conference or anything that you have someone
24 with some authority, as they call you into chambers, or
25 what have you, is that you consider perhaps either a
26 finding of noncompliance or a finding wherein it's

1 agreed that compliance may be hard to determine one way
2 or the other, and we look at perhaps resolving this
3 once and for all in terms of a commitment either with a
4 graduated percentage of recycled content in each of
5 your products over a certain thumb of years, and in
6 addition -- and you say, we'll that's great for you,
7 Board, but where does that leave us, Sears?
8 I think there's another thing, too. I think
9 that there may very well be an interpretation that
10 Sears should or should not be part of this, and that
11 the Board's commitment as well would be to pursue
12 legislation in conjunction with those who are similarly
13 situated as Sears to see that this doesn't happen
14 again. As my colleague, Mr. Frazee, said, he probably
15 doesn't think this is a great law or a bad law, but it
16 could be made better, but I think this is one of those
17 situations where if you have a good set of facts, you
18 can sometimes correct, you know, what may have been an
19 oversight or foresight, as the case may be, and so I
20 think that's kind of like where, I think, some of us
21 would like to see, that you can forget about all of the
22 gyrations that take place. It preserves our position,
23 vis-a--vis other individuals who may come who may have
24 the information and may very well fit within the
25 smaller confines, and at the same time, I think, helps
26 Sears implement some of that greening of the food

1 chain, because you do have the buying in economic power,
2 and I don't make any bones about what percentage or
3 anything like that, but I think that's the kind of
4 situation we're looking at to not only avoid, but to
5 provide.

6 And in one of the things that takes
7 place, too, that I think -- and this was my own personal
8 opinion. I'll let the Board members speak for
9 themselves, or the staff -- is that if you have these
10 kinds of situations where you get the recycled content
11 or a percentage of it, and, you know, you may or may not
12 be -- with certain products be able to create the kind
13 of structure that you need to hold the product, and in
14 an event those might be exempt, and there might be just
15 an exemption from the certification process, and the
16 certification process becomes one by which the
17 percentage of recycled content, which everyone seems to
18 be using now is part of it, or, as Mr. Jones said, a
19 packaging program.

20 MR. ZBUR: I guess in response to that,
21 I would say a couple things.
22 I would hope this the outcome of this process is one in
23 which you're focusing on the precedent you set on the
24 the other direction as well, and I think your comments
25 are well taken, but, you
26 know, this is a case where you actually have a company

1 who, I think, rather than taking his marbles and going
2 home and saying, "I don't have the information. You
3 know, it's \$100,000 penalty." It has made a good faith
4 effort to try to comply, has come to you and worked
5 with your staff, I think very early, has made
6 commitments to move forward with you, and I think is
7 telling you that it is interested in developing a
8 partnership to look at ways in which retailers can help
9 you meet your goals.

10 Neither Mr. Kuberka nor, I think, any other
11 single individual within the Sears management has the
12 ability given the way most large companies are formed
13 to make a decision, so it's always going to be a group
14 unless it goes to chairperson of the organization. I
15 think what we were hoping would come out of this
16 process was information that would allow you all to
17 understand better some of these issues and allow us to
18 work with you and your staff to modify either the
19 regulations or, if necessary, the legislation to meet
20 your goals.

21 Now, Sears, I don't think, is in a position
22 where it can today say that it's going to make any type
23 of commitment without knowing anything about the
24 product packaging that it has, and it just has no data
25 now. So I think, you know, they'll be in a better
26 position at the end of this process. I also think

1 that -- you know, I hope what comes out of this process
2 is not something where a company who has, I think,
3 acted in good faith in a case in which there is
4 questionable applicability ends up with a black mark,
5 because I think ultimately what it does is it sends the
6 wrong message that by cooperating with an agency,
7 cooperating with the staff, trying to do the right
8 thing, you're going to end up getting a public
9 reprimand, and that's why we've come to you and asked
10 for something along those lines. Now, we're happy to
11 have it shortened in terms of the timing, add
12 additional information into the protocol. You know, we
13 really are flexible in trying to do something that
14 helps you meet your objectives, and we'll provide data
15 so that Sears can work with you and have its management
16 analyze, you know, what makes sense and what it can
17 support in the long run, and I think that's the
18 commitment that Sears is able to make today.

19 MEMBER EATON: And all of those points are
20 well taken and understood and I believe, you know,
21 carry a lot of weight, but from a precedential value,
22 the fact that even in your protocol -- and the reason
23 why I made my comments was to try to stay away from
24 protocol and the specifics and see if we could get
25 someplace else. First, is that if we drop any item
26 because there's no information, and we do know of

1 certain manufacturers, true manufacturers in '96 who do
2 exist, isn't that setting a precedent right now, and
3 there's a number of individuals in this room right now
4 who are just waiting for us to make a move like that,
5 and then basically they come in and say, "You gave it
6 to those guys. Why didn't you give it to us?"
7 So I think that's part of the concerns that
8 I have in terms of dropping a product. If information
9 doesn't exist, then I think our options are limited. I
10 think that it's always been our situation from day one,
11 and if you went back through the transcripts on the 500
12 sample, that was kind of initially because there was
13 all kinds of debate whether we could get to everyone,
14 and I don't need to bore you with those -- I'll provide
15 the transcripts if you want to be bored -- but I do
16 believe that one of the things that this law has always
17 afforded the Board, rightly or wrongly, is that it can
18 fashion a remedy easier than it can fashion what it can
19 and cannot do from a procedural or a process
20 standpoint, and I think that's where we're trying to
21 go, and I think that's where you can help us get there
22 without doing some of this. I can't believe in some
23 cases if you didn't go back and say, we can resolve all
24 of this if we just figure out -- you know, it can be
25 one kind of product. It could be on other things. I
26 mean, you've got a number of individuals here,

1 Californians Against Waste, who understand some of
2 these products, that we just need to look at the remedy
3 side, because otherwise I think the precedents set by
4 some the things contained within your protocol are so
5 detrimental to the overall effort, that while we win
6 the bottle we lose the war.

7 MR. ZBUR: I guess may be the one thing I
8 might say is that one thing the Board may want to
9 consider is making, at the end of this processing -- I
10 mean, I understand your overall process, I understand
11 you're going to be making some decisions regarding what
12 you do regarding enforcement of this program, and I
13 think one of the things you might want to consider is,
14 because Mr. Kuberka and Mr. Kulevich and others that
15 are in the environmental affairs division are going to
16 be going back to others in Sears management at their
17 level in other areas and going to be, you know, having
18 to indicate what this does for Sears as an
19 organization, and I think, you know, at the very least,
20 it should be something that this Board takes into
21 account on whether or not it seeks enforcement action
22 against companies. I think you do probably have the
23 authority, and I'd ask your counsel to look at that as
24 to whether or not -- how you enforce and whether or not
25 you actually stigmatize companies that have actually
26 worked with you in good faith and made good faith

1 efforts to comply, and I think you can enforce against
2 companies that have done -- that don't meet some
3 standard that's out there.

4 So at the very least what I'm hoping today
5 is that the Board approves the protocol moving forward
6 without necessarily an indication of whether or not
7 it's going to make a finding of compliance or
8 noncompliance, and then, I think, maybe give some
9 assurance, at least at some level, that moving forward
10 with the protocol will be taken into account in terms
11 of whether the Board actually seeks to take some type
12 of enforcement action against this company and
13 potentially others that have acted similarly.

14 CHAIRMAN PENNINGTON: Okay.

15 Mr. Eaton are you through?

16 MEMBER EATON: From now.

17 CHAIRMAN PENNINGTON: Okay.

18 MEMBER EATON: I'll wait to hear from legal
19 counsel.

20 CHAIRMAN PENNINGTON: Mr. Jones.

21 MEMBER JONES: Mr. Chairman, I just have a
22 couple of questions.

23 I probably should know this, but I don't.

24 We're doing the '96 certification. Is there a
25 requirement in law to do a '97 and '98?

26 MS. TRGOVICH: Absolutely.

1 MEMBER JONES: Did we -- We picked these 500
2 I'm assuming out of a hat or some random list. I don't
3 want to see this opportunity to get Sears' information
4 and potential to create a partnership talking about
5 bigger issues that deal with all kinds of packaging.
6 What is the -- you talked about precedents -- what --
7 and I don't know if anyone would even be willing to
8 listen to this, but I'm going to throw it out there
9 anyway -- what would be the ramifications of dropping
10 them from the 1996 certification program and putting
11 them into the 1997 certification program on a
12 compliance -- not a compliance schedule, but on a
13 schedule that we agreed to starts today with that
14 process?

15 MR. ZBUR: We originally asked for that and
16 discussed that with your staff and, frankly, did not
17 propose it because I think there was a concern
18 expressed that that would not be well received, and we
19 wanted to make sure that our commitment to recycling
20 was something that was clear and thought that that type
21 of request would indicate something other than what we
22 wanted to indicate.

23 CHAIRMAN PENNINGTON: It's a good indication
24 that they should have talked to us first.

25 MR. JONES: I think, you know, Mr. Eaton's
26 right. We're on a precipice of -- you know, we have --

1 this is a huge issue, but I think that that cooperation
2 that Sears is offering is more important than -- so I'm
3 going to figure -- I'm offering a way that we can take
4 it out of this box.

5 CHAIRMAN PENNINGTON: Let's let them --

6 MS. TRGOVICH: One thing I would like to
7 raise, and one of the reasons why we indicated to
8 Sears -- we certainly didn't tell them that they
9 couldn't make that request. One of the reasons why we
10 indicated why it wouldn't be well received is, we've
11 received similar requests, not from entities in the
12 same situation as Sears, but from distributors. I know
13 that there is members sitting up there that I've
14 referred phone calls to to individuals in similar
15 situations that have made such a request. So that was
16 one of the reasons why we did that. We've had
17 absolutely no one come forward and offer to work with
18 us in this cooperative manner, propose this kind of
19 approach that would get us not only information to
20 assist them in compliance, but provide us information
21 for future regulatory revisions and program work. This
22 is unique. What would not be unique would be
23 withdrawing the certification in terms of requests
24 having been made.

25 MEMBER JONES: That's not, you mean, people
26 who have asked to be withdrawn?

1 MS. TRGOVICH: No. We have had several
2 requests along those lines. They are once removed, not
3 two or three times removed, similar to Sears, but they
4 are in the position of being distributors. Their names
5 are on the label, and they do not have the direct
6 relation -- they are not the actual product
7 manufacturer.

8 CHAIRMAN PENNINGTON: Are they asking to be
9 removed permanently? It seems to me that Sears is
10 willing to say, "Okay. We've got a lot of problem with
11 '96, but we're willing to do the '97."

12 MS. TRGOVICH: Frankly, we have had not had
13 those detailed discussions. The discussions that I
14 have had were more along the lines of what Mr. Zbur
15 raised initially, and that is, we should not be subject
16 to this law to begin with. We feel that we are being
17 singled out not -- singled out, but being the recipient
18 of this certification inappropriately. We do not meet
19 the definition of a product manufacturer.

20 CHAIRMAN PENNINGTON: Okay.
21 Mr. Frazee.

22 MEMBER FRAZEE: Well, Mr. Chairman, I've
23 been sitting here biting my tongue and resisting the
24 attempt to go into my usual tirade on this subject, but
25 what the heck. The hour is late.

26 MEMBER EATON: It's getting better every

1 meeting.

2 THE WITNESS: You know, we're dealing with a
3 law that's unworkable on its face. It has the wrong
4 target. Even if it's played out to its ultimate, it
5 doesn't achieve anything. The random sampling doesn't
6 get at anyone. There's no end result, and in the
7 meantime we've spent -- one company alone is talking
8 about hundreds of thousands of dollars to comply with
9 this. I know it's statute, and I'll resist my usual
10 thing about some of the dumb things the legislature
11 did, but this ranks right up there with ones, and I
12 probably voted for it, but I think it's pretty clear in
13 this case, and, you know, I'm not going to give advice,
14 but I don't think Sears qualifies under this
15 definition. I think it's clear in statute, and it may
16 be muddled a little bit by regulation, but they're
17 clearly not a manufacturer, and if we're going to
18 target people, we ought to be targeting manufacturers.
19 That's what the statute intended originally. And
20 because Sears is a giant and they're willing to come in
21 here with all the staff and try to be good people, but
22 it's like going after Mom and Pop's Corner Store with
23 the 200 items they have on the shelf and asking them to
24 certify the recycled content of all of theirs. It's
25 just that same principle multiplied a thousand times
26 over.

1 You know, my solution to this would be to
2 find that Sears is not a manufacturer under the law and
3 dismiss them and tell them to go home. The issue of
4 trying to use this as some leverage for getting some
5 compliance with the ultimate goal, and that's to get
6 more recycled product and container reduction, source
7 reduction, is a good one, but that's extra statutory.
8 That's not provided in the law now. If we want to
9 pursue that and require it statutorily, then we ought
10 to have a legislative proposal prepared to go, and try
11 it through the legislature and see if they are willing
12 to adopt a minimum requirement for all plastic
13 containers. That's the right approach, although,
14 you've heard my thoughts on that one, too, but still,
15 at least it's cleaner and clearer than this clouded
16 method that we're going through now. The reason this
17 is taking so long, because there's no right answer.
18 We're all sitting here, you know, trying to talk around
19 the subject when there is no answer. Doing what they
20 want to do creates unfairness with other people, and I
21 say my solution is to dismiss them and tell them to go
22 home.

23 CHAIRMAN PENNINGTON: Ms. Tobias, let's hear
24 from you.

25 MS. TOBIAS: And on that note, what I wanted
26 to talk to the Board about was the staff recommendation

1 basically suggests that the Board either adopt a
2 protocol or not adopt a protocol on this, and I wanted
3 to suggest that we might be in a better position as
4 opposed to adopting a protocol, that we look at this
5 more in the compliance stage, and instead of telling
6 Sears at this time, even though I know Sears would like
7 this authorization, that we basically say, you know,
8 "We understand what you're doing. We understand your
9 constraints. We understand the problem this has
10 presented. Go ahead. It sounds like a good faith
11 approach, but we're not going to basically accept it as
12 a substitute protocol," because I'm not sure there's
13 the authority to do that. I don't think there's really
14 specific authority to accept a substitute protocol.
15 I've also been reminded by the Executive Director that
16 there's nothing that says you can't do that. So I
17 think it's important to put it into context, but I do
18 think that the Board would have more discretion at the
19 compliance stage to look at what a "manufacturer," in
20 quotes, would do in terms of their good faith effort,
21 whether they've tried to comply, whether there was a
22 problem in timing, and so I felt that it was important
23 to at least put that choice before you, that I think
24 there's two different times you can do this. Either
25 now and authorize a protocol, or look at them at the
26 time of compliance and acknowledge all the effort that

1 they're putting into this.

2 I think one of the advantages of looking at
3 it more at the compliance stage is that it doesn't
4 necessarily open the door to all the rest of the
5 entities who are now trying to deal with some kind of
6 compliance with this statute. I am concerned that
7 there might be challenges to the Board's authority to
8 accept this protocol in terms of particularly fairness
9 to the other manufacturers who are now undergoing this.

10 I think that if we were looking at it more at the
11 compliance stage, the kinds of justifications or
12 rationales that we would use would be the relative
13 infancy of this process, this year's our first
14 experience, that we think this entity has basically
15 tried to do as much as they can to comply with it,
16 given the fact that they're -- basically I think,
17 nicely saying, that this probably doesn't affect them
18 in the first place. We could talk about the size of
19 the product "manufacturer" -- again, manufacturer in
20 quotes -- and the number of products that they deal
21 with, their degree of removal from the manufacturing or
22 packaging process, the variety of products that they
23 deal with, the resources that are required for the
24 manufacturer to comply.

25 So, I do want to suggest that I think it
26 might work better at the compliance stage. However, I

1 also want to offer -- and I think this is something
2 that we've only come up with listening to this
3 discussion -- there is a section, 17946, little D in
4 parens, which basically talks about, "in addition to
5 random selection." So it's basically giving -- it's
6 acknowledging that maybe there's something else that
7 the Board could look at. "The Board may use the
8 following criteria to determine when to request a
9 certification form from a product manufacturer." It
10 then goes on to lists several types, and I'm going to
11 read those, but I do want to read the end of it. It
12 basically says, "The Board may use the following
13 criteria. When the Board suspects that a container is
14 not in compliance."
15 So if you use this section, it does raise
16 the specter, at least, that under the plain meaning of
17 the regulation that Sears isn't -- somehow not in
18 compliance, but one of the things that it does list in
19 this criteria is company size. It also lists container
20 type, product type held by the container, company size,
21 or receipt of information that causes the Board to
22 suspect that the container is not in compliance.
23 So I would offer up the possibility that if
24 the Board wants to authorize this, I would see and
25 it's kind of a combination of some of the things that
26 the Board members have talked about -- is not so much

1 this is an alternative protocol, but fitting it into
2 this section if Sears doesn't mind the connotation that
3 it basically says something to the effect that there's
4 a suspicion not being in compliance that it could
5 either be due to company size, and then what you're
6 basically dealing with is saying, okay, this is -- you
7 know, that staff is recommending this based on the
8 company size, or they may wish to go back and deal with
9 it more on what it says is a container type or a
10 product type.

11 So I'll just offer that up, that I see those
12 as kind of the two choices, to either try to come under
13 this if Sears doesn't mind somewhat a somewhat
14 majoritive rationale there, or we could deal with this
15 at the compliance stage as opposed to this stage. In
16 I'm very concerned that there will be a number of
17 people coming in as soon as we do this who will all be
18 asking for something different.

19 So I do think that the -- using the 17946
20 section does open the door more to other people
21 requesting that type of situation based on some kind of
22 circumstances, but I think that's something for the
23 Board to consider, or I would suggest that we do it at
24 the compliance stage.

25 MEMBER JONES: I have a quick question of
26 Ms. Tobias.

1 CHAIRMAN PENNINGTON: Go ahead.

2 MEMBER JONES: What about, Mr. Frazee
3 interprets these people as not being manufacturers?
4 think that might go to the heart of this thing.

5 MS. TOBIAS: Well, it's certainly I think
6 something that we could look at. As I understand it,
7 the way we've gone back to look at -- was it the
8 development of the regs statement of history or the
9 history -- both -- so we've looked at the legislative
10 history and the statement of reasons that adopts these
11 regs and feel that there is a basis for it. However,
12 I've also just asked staff to basically let me see a
13 memo on this. It's something that we haven't looked at
14 at this point, you know, in a legal memo. So I am
15 planning on doing that in any case, but I'm not
16 prepared to say whether that would work today or not.

17 CHAIRMAN PENNINGTON: Well -- go ahead,
18 Mr. Eaton.

19 MEMBER EATON: I'm just wondering here
20 that -- that the one section you referred to is more
21 additional, isn't it, as opposed to an alternative?

22 MS. TOBIAS: It's -- I think I'll just put
23 in membership own plug here. I think that regs written
24 in a question/answer format should not be allowed
25 basically.

26 MEMBER EATON: I wasn't here.

1 MS. TOBIAS: I was, and I remember objecting
2 to these at the time. I wish I had stood my ground.

3 MEMBER EATON: So do I.

4 CHAIRMAN PENNINGTON: I wish you had, too.

5 MS. TOBIAS: I think the way this reads,
6 little D says, "How will the Board determine which
7 product manufacturers are to submit a rigid plastic
8 packaging certification form, and how will the Board
9 notify product manufacturers of its determination?"
10 Then the answer to that, which I'm not sure is even
11 responsive to the question is, it says, "In addition to
12 random selection." I'm willing to basically consider
13 that to say that you could read it, either along with
14 the random selection you could look at these, or that
15 you could pull in other manufactures in addition to
16 those selected. I would suspect that the better
17 reading of it is the latter basically, that it says,
18 "After you picked your random selection, if you suspect
19 that there are other manufacturers who are out of
20 compliance, then you could go look at them on these
21 bases.

22 I guess what I think this language in the
23 regulations opens up is the ability to basically say
24 that there is to the possibility that that something
25 else can be considered in addition to random selection,
26 and that there's an acknowledgements that there might

1 be other concerns to deal with. I think that's a little
2 weaker, but I think that's a possibility.

3 MR. EATON: With respect to the first
4 alternative, as you've handled as a of compliance
5 issue, that -- first off, you feel that there's a basis
6 that we have the authority to do so, or at least an
7 indication that we would have -- we would be on solid
8 footing?

9 MS. TOBIAS: In compliance?

10 MEMBER EATON: If we handled the
11 matter in a *Amicus* compliance setting --

12 MS. TOBIAS: Right.

13 MEMBER EATON: -- some of the things
14 that are here -- we're not sanctioning the protocol,
15 because if I hear what you're saying, is we don't
16 really know where this is going to go. I mean, that's a
17 fair statement, and that's not to say that you haven't
18 made good faith efforts or anything. I think you're
19 just trying to say for time. I mean, others may very
20 well be in the same situation. So that the only
21 precedent that we might be setting is the fact that
22 we're handling it in a compliance setting.

23 MS. TOBIAS: I think the precedent
24 that you're setting is that if there's an entity that's
25 having some kind of difficulty complying with a state
26 statute and state regulations, that they come in as

1 early as possible. They work with the staff on how
2 they may be able to at least meet the intent of the
3 law, if not the letter of the law, and I guess I'm
4 pretty comfortable with that kind of precedent, 'cause
5 I think it tells anybody else to come. Then I think
6 what we can do is we can say -- the Board can say they
7 can evaluate when there's a good faith compliance or
8 not. When this is an initial year of compliance, I
9 think that there, you know, is probably more room to
10 move probably five or ten years down the road.
11 Another thing might be is if the Board likes
12 what Sears comes in with is that you may wish to adopt
13 regulations and basically say this has provided
14 something when you have these kinds of problems. You
15 are, in essence, a distributor, perhaps not a
16 manufacturer. You are a very large company, and, you
17 know, et cetera. You know, then let's go ahead and
18 look at that and see if that's something that you
19 basically want to put into the regulations.

20 MS. TRGOVICH: And just by note on that
21 point, I'd just like to interested parties meeting that
22 as such staff, we have told all the interested parties
23 that once we are through this certification process, we
24 are committed to reopening the regulations as a part of
25 Sunset Review because we have never implemented this
26 portion of the regulations before and we've found

1 numerous problems which we want to be able to fix.

2 MS. TOBIAS: And those would be, of course,
3 not be in question and answer format?

4 CHAIRMAN PENNINGTON: Let me tell you how I
5 feel about all this. We talked and I think we need to
6 start to try to bring some resolution to this, but
7 first I agree with Mr. Frazee that I think we ought to
8 declare that they are not subject to the statute and
9 send them back to Hoffman Estates and leave them alone.
10 I can't possibly see how Sears can be considered a
11 manufacturer. I think that's like trying to call a
12 semi truck a Volkswagen Beetle. If we can't do that,
13 then I think we ought to let them try to change to the
14 '97 or '98 where they have some time, and we can get
15 some decent figures from them.

16 And third, if we can't buy those two, then I
17 think we should accept the protocol and move on.

18 MR. RHOADS: Mr. Chairman, you don't --
19 you're not implying to want to support the proposal of
20 dealing with this in a compliance in allowing them to
21 go on but not us vote on it here and deal with it as a
22 compliance issue?

23 CHAIRMAN PENNINGTON: I guess my problem
24 with that is is that that's sending them off and
25 telling them to do a lot of work and expend a lot of
26 funds without any assurance from us that we're going to

1 accept what they do. They've come to us and said, "We
2 see we have a problem here. How can we work it out?"
3 And what we're doing then is saying, "Go do
4 the work, and if we like it, great. If we don't,
5 you've wasted a lot of time and money."

6 MR. CHANDLER: I know the hour is late, but
7 I have been asked by staff if we could have five
8 minutes just to reconnoiter with our counsel before
9 perhaps we offer a final thought on this. I don't know
10 if that's amenable to the Board.

11 CHAIRMAN PENNINGTON: That's fine with me.
12 I think we all could take a little break here.
13 (Whereupon, a break was taken.)

14 CHAIRMAN PENNINGTON: Come back to order
15 here and business.
16 Who's going to talk here?

17 MR. RHOADS: I think I have to say something
18 first. I think I have one of these ex parte contacts.
19 I think I'm supposed to --

20 CHAIRMAN PENNINGTON: You're learning.
21 You'll learn. See, you go outside and stay away from
22 them.

23 MR. CHANDLER: Well, Mr. Chairman --

24 MR. RHOADS: I had a quick conversation with
25 Mr. Best and with the two gentlemen from G.E.

26 MEMBER JONES: As did I.

1 MR. RHOADS: Did I say G.E.

2 CHAIRMAN PENNINGTON: Sears.

3 MEMBER RHOADS: Sears.

4 CHAIRMAN PENNINGTON: It's easier to say
5 Sears and Roebuck than it is these two guys' names.

6 MEMBER JONES: Mr. Chairman, I had the same
7 ex partes.

8 CHAIRMAN PENNINGTON: Mr. Chandler.

9 MR. CHANDLER: While you were busy speaking,
10 we did try to go back and formulate an update to
11 staff's recommendation, try to take into account really
12 the guidance from counsel, and I'm going to ask Caren
13 to try to take a stab at what we think is -- would be a
14 final staff recommendation for your consideration at
15 this point.

16 MS. TRGOVICH: What we are recommending,
17 based upon the testimony of the Sears representatives,
18 as well as all the dialogue amongst the members and
19 staff, is that you consider this protocol in light of
20 the compliance option that the Board will have before
21 it at either it's November 5th meeting or a subsequent
22 meeting depending upon the completion of the summary
23 report from Price-Waterhouse. It is our
24 recommendation, based upon the regulations in the
25 statute at this time, that the best alternative for the
26 Board to consider is to not adopt the protocol, not

1 deny the protocol, but to provide the direction to
2 Sears that we will consider this at the time that staff
3 returns with recommendations across the entire
4 certification process.

5 I would like to get on the record that it is
6 staff's opinion that this protocol would certainly meet
7 a good faith effort, and that we feel that this will
8 provide a representative view on Sears' products that
9 fall within the scope of this law, and if they follow
10 this protocol that that will be contained within our
11 recommendation.

12 So our recommendation is that you not adopt
13 the protocol, not -- certainly not deny the protocol,
14 but provide direction that this will be considered at
15 the time of consideration of compliance.

16 MEMBER FRAZEE: Mr. Chairman?

17 CHAIRMAN PENNINGTON: Mr. Frazee.

18 MEMBER FRAZEE: I'm going to try my motion
19 first, and that's that this -- I will move that this
20 Board determine that Sears and Roebuck does not meet
21 the statutory test of the manufacturer of products
22 contained in rigid plastic containers and, therefore,
23 are exempt from provisions in the statute.

24 CHAIRMAN PENNINGTON: I'll second that
25 motion.

26 Is there any discussion on the motion? If

1 not, the secretary call the role -- yes, Mr. Jones.

2 MEMBER JONES: Mr. Frazee, you've read the
3 definition, and you are one of the legislators who put
4 this in, and in your mind this does not meet that
5 requirement?

6 MEMBER FRAZEE: Right.

7 CHAIRMAN PENNINGTON: Okay. Any other
8 discussion? If not, will the secretary call the roll.

9 THE SECRETARY: Board Member Eaton.

10 MEMBER EATON: No.

11 THE SECRETARY: Frazee.

12 MEMBER FRAZEE: Aye.

13 THE SECRETARY: Jones.

14 MEMBER JONES: I'm going to hold for a
15 minute. I'm having a problem with this.

16 THE SECRETARY: Rhoads.

17 MEMBER RHOADS: No.

18 THE SECRETARY: Chairman Pennington?

19 CHAIRMAN PENNINGTON: Yes.

20 Mr. Jones.

21 MEMBER JONES: No. I think what I would
22 like to do, though, is offer a substitute --

23 CHAIRMAN PENNINGTON: Motion fails.

24 MEMBER JONES: -- I'll offer another motion.

25 I would like staff to define this

26 manufacturer. You know, is this definition -- is Sears

1 exempt because they are not a manufacturer, and I want
2 that to come back for that discussion. These gentlemen
3 are going to need to go back to Chicago and tell their
4 bosses what the decision was of this Board.
5 So I would say that as part of the motion,
6 Number 1, to define what is a manufacturer and do they
7 fall within that category, and I think we need that
8 answer as soon as possible, and in light of that not
9 adopt or deny the protocol, but consider it the work
10 plan that they will take, pending that determination as
11 to whether or not they are a manufacturer.

12 MEMBER EATON: I would just caution my
13 colleague about trying to obtain a legal opinion and
14 trying then to fit that within the framework of our own
15 regulations or statutory law, and I would caution you
16 that one of the things that might be more appropriate
17 is for us to investigate and report back some of the
18 case law and some of the other, perhaps, arguments for
19 and against and some of the other legislative history
20 that we're not privy to right now. I think it's not
21 appropriate for us as a body to interpret statute
22 per se, and as in our own regulations, I think one of
23 the true remedy for that is either a legal or declaratory
24 relief or legislative. It's not that I'm not
25 supportive of that. I just believe that sometimes
26 you've got to be a little more careful as to where

1 you're going, because that also can raise some issues
2 as to what constitutes for purposes of some of the
3 others that fit within that definition. So I would
4 just ask, if you want to do that, we can direct staff
5 to come back, look at it, give us some information, but
6 that should all be part of the overall process by which
7 we look at compliance and some of those issues as
8 opposed to one in particular. You have to look at the
9 greater, because the whole -- the parts make up the
10 whole, and I think you might have some other
11 information at that time that might also indicate that
12 as well, because I too disagree that, you know, we may
13 have a Volkswagen Beetle and a semi truck. If it hits
14 someone, it's still a moving vehicle, and at the same
15 time there is certain vicarious liability, and the
16 distribution that we have certain kinds of body of both
17 case law and statutory law, which, you know, fair or
18 not fair, you know, and there's been a number of
19 propositions, and I'll whip one right back,
20 Proposition 51, if we all remember, is one that sort of
21 allowed local governments that when they claimed that
22 they were being hit with deep pockets, and so on and so
23 forth, and that truly wasn't the case either, and I
24 think if you look at it as part of the whole process in
25 what we're going to do in the whole of our
26 recommendation, that I think seems to be fair in the
233

1 context of compliance, but to kind of do a certain
2 legal opinion, then you get dueling legal opinions, and
3 you don't want to have that either, because I think
4 then you force a situation, proponents of a contrary
5 view would have to go in and seek either litigation
6 and/or some other kind of remedy, and that's not what
7 we're here for. We're here to try and see how we can
8 treat people fairly, whether they be individuals such
9 as Sears or people who would like us to do more, and I
10 think that's where the caution comes in.

11 CHAIRMAN PENNINGTON: Mr. Jones, would
12 you restate your motion?

13 MEMBER JONES: Well, Mr. Eaton makes
14 some good points. What I'm trying to get at is most of
15 the staff recommendation, but I want to include either
16 whatever that background needs to be. Maybe I'm using
17 the wrong word and saying legal opinion.

18 MR. CHANDLER: Mr. Jones?
19 Ms. Trgovich, you indicated you were going to be
20 bringing these regulations back for review. What was
21 the time frame for that? Was that January of next
22 year?

23 MS. TRGOVICH: I believe it was the
24 December/January time frame. At the time that we
25 scheduled these for Sunset Review, we did not envision
26 a certification process. So it would be following the

1 completion of this cert process.

2 MR. CHANDLER: Would that be amenable to you
3 when we look at the entire body of regulation that we
4 include at that time a complete review of the
5 definition, or the justification of any supporting
6 regulation around the statutory definition of what is a
7 manufacturer?

8 MEMBER JONES: Sure. That would work.

9 MR. CHANDLER: That would give counsel a
10 little more time to prepare a thorough analysis as
11 well.

12 MEMBER JONES: That would work. Let me ask
13 before -- I'm not going to make a motion. I'm going to
• 14 ask for a little more discussion.
15 The idea that we had about dropping them out
16 of the '97 certification and down into '97 and '98, is
17 that legal?

18 MS. TOBIAS: Is putting them into the '78
19 category --

20 MEMBER JONES: '98.

21 MS. TOBIAS: Whatever, the next. You know,
22 I think the problem with that is that the regulations
23 basically lay out this idea of this random process, and
24 I think that as soon as you take out this entity from
25 your random process, you're going to get requests for
26 others to be taken out of the random process as well.

1 I think we're -- and I don't mean to be an alarmist --
2 but I think that we're getting close to -- with some of
3 the proposals to do this to basically not have this
4 program work. I think one of the things that's
5 really --

6 MEMBER JONES: Getting close to it?

7 MS. TOBIAS: I meant in terms of this here.

8 I think one of the things that's important
9 to realize is that -- and maybe Caren would want to
10 describe the compliance process here very briefly as
11 she did to us, but there's a lot more leeway in the
12 early years of a program than there is as it goes
13 further, and I think that it might actually be to the
14 benefit of Sears to be exactly where they are at this
15 time with an alternative proposal in the first year of
16 the program where they can say, "We did our best. We
17 came in. We worked with you," and I think that the
18 Board in looking at compliance then has more leeway
19 than you do if you start tinkering with the definition
20 of who is a manufacturer, which I think goes to the
21 heart of the validity of the regulations. If you
22 tinker with, instead of having someone in the random
23 selection of moving them to another year -- I mean, I
24 can't give Sears advice, but I actually think that
25 they're in a very good place at this point, having come
26 in, doing the kind of program that they're doing. It's

1 hard to see how that's not going to basically be
2 considered a good faith approach.
3 But I think it would be helpful if Caren
4 described once again, you know, what happens next after
5 we get these figures in.

6 MS. TRGOVICH: Very briefly, what you
7 approved when you directed staff to embark upon a
8 certification process was a bifurcated process whereby
9 you directed staff to do a random certification of 500
10 certificants, or whatever we should call them,
11 respondents, and then you said, "Bring that back to us.
12 We'll that a look at the information on the whole and
13 decide if we want to proceed any further at that point
14 with respect to 1996."

15 So you will have before you at approximately
16 your November 5th meeting, not a decision around
17 whether to pursue Sears on a compliance basis,
18 compliance enforcement basis, or Vaughn's, or whatever
19 entity it is, you will have a broader decision on
20 whether to pursue compliance enforcement at all based
21 upon the summary reports that Price-Waterhouse will be
22 bringing forward. If you choose to do that, then there
23 will be a process setup on how to proceed.

24 I'd like to make one other point in terms of
25 rolling them to the '97 process, and this could be not
26 to Sears' benefit, as Katherine stated, because in the

1 early years, there is a lot more leeway, or it could
2 certainly be to their benefit, and that is if the rate
3 for '97 is above 29 percent, there is no certification
4 process.

5 MEMBER JONES: Mr. Chairman?

6 MEMBER EATON: Don't forget we did do this,
7 and I didn't do it, but you had the luxury of doing it
8 with local government. This is the same process and
9 just once removed, as someone reminded us, that where
10 you looked at local governments and whether or not they
11 met the 25 percent, and those kinds of things, there
12 may be some distinguishing factors, but I think in
13 terms of being able to fashion some of that, that's
14 what this is all about.

15 CHAIRMAN PENNINGTON: Mr. Jones.

16 MEMBER JONES: Go ahead, Mr. Frazee.

17 MEMBER FRAZEE: Just two points.

18 I don't think you can make a comparison
19 between this when you're dealing with a million
20 companies and a finite list of local governments.
21 That's comparing apples and oranges, but the real point
22 I wanted to make, and I want to point out to my fellow
23 Board members is that this determination of who's in,
24 and who's out is purely an arbitrary decision to begin
25 with. It was not a legal interpretation. It was staff
26 sitting down and taking a list of companies and saying,

1 "Yeah, this one qualifies. This one doesn't. This one
2 qualifies. This one doesn't," and determining who was
3 in that pool of companies we're going after. So it was
4 not based on any legal decision. It was based on staff
5 interpretation.

6 MS. TRGOVICH: Just for the purposes of the
7 record, to point out we did not, when we put the list
8 together, make a determination that all of those
9 receiving the certification were in or out. It is
10 based upon specifically the products, so each company
11 then determined whether or not they were subject to
12 once they received the certification.

13 MEMBER FRAZEE: But it was an arbitrary
14 list?

15 MS. TRGOVICH: Correct.

16 MEMBER FRAZEE: Otherwise it would have
17 100,000 or 200,000 or 500,000 names on it. Then it
18 didn't.

19 CHAIRMAN PENNINGTON: Let's see if we can
20 get some resolution to this now.

21 MEMBER JONES: Mr. Chairman?

22 CHAIRMAN PENNINGTON: Yes, Mr. Jones.

23 MEMBER JONES: I think what I have a problem
24 with this staff's recommended motion is that we're
25 saying, we're not going to adopt it, and we're not
26 going to deny it. So they don't know what the result

1 to their effort's going to be. So they're going to
2 spend \$100,000, and we may determine that, well, it
3 just wasn't good enough. They're better off paying the
4 \$100,000 fine. They probably were better off paying
5 the \$100,000 fine a couple of months ago. I have a
6 problem --

7 MEMBER EATON: Finally, recovery.

8 MEMBER JONES: Sears has offered to be a
9 source of information to do this. They've offered
10 protocol. If we're going to go down this path, I'm
11 going to make a motion that we adopt their protocol,
12 and that way they know one way or the other what the
13 outcome is going to be.

14 CHAIRMAN PENNINGTON: I'll second that
15 motion.

16 MEMBER JONES: That motion was the original
17 Resolution 98-329 and including the proposed protocol
18 from Sears.

19 MR. RHOADS: Can I ask a question?

20 CHAIRMAN PENNINGTON: Mr. Rhoads.

21 MEMBER EATON: Are you including the
22 dropping of the item if they don't have the
23 information?

24 MEMBER JONES: Yes.

25 CHAIRMAN PENNINGTON: Mr. Rhoads.

26 MR. RHOADS: I don't know the -- all these

1 procedural calls. I've often heard somebody do a
2 substitute motion.

3 CHAIRMAN PENNINGTON: Sure you can do a
4 substitute motion, which takes precedent over the
5 original motion.

6 MR. RHOADS: In that case, I'd like to do a
7 subsequent motion.
8 I'd basically like to move the staff's
9 recommendation.

10 MEMBER EATON: I'll second that motion.

11 CHAIRMAN PENNINGTON: Okay. It's been moved
12 by Mr. Rhoads and seconded by Mr. Eaton to accept the
13 amended staff recommendation.

14 Is there any further discussion?

15 I would only say that I have to agree with
16 Mr. Jones that by doing that we're putting this company
17 in -- a company that is trying to be friendly in a
18 limbo area. They don't know. They're going to spend
19 their money -- or maybe they won't, but I think we're
20 not giving them much to go on.

21 With that, will the secretary call the roll.

22 THE SECRETARY: Board Member Eaton.

23 MEMBER EATON: Aye.

24 THE SECRETARY: Frazee.

25 MEMBER FRAZEE: Aye.

26 THE SECRETARY: Jones.

1 MEMBER JONES: No.

2 THE SECRETARY: Rhoads.

3 MEMBER RHOADS: Aye.

4 THE SECRETARY: Chairman Pennington.

5 CHAIRMAN PENNINGTON: No. Motion fails.

6 I'm going to take up the original motion,

7 which is to --

8 MEMBER JONES: I'd like to ask a question.

9 CHAIRMAN PENNINGTON: Okay.

10 MEMBER JONES: Oh, I'm sorry.

11 CHAIRMAN PENNINGTON: Okay. Go ahead.

12 MEMBER JONES: No, you're right. There was

13 another motion.

14 CHAIRMAN PENNINGTON: The original motion of

15 Mr. Jones, which is to adopt the staff recommendation

16 as presented in the agenda item today, which is

17 Resolution 98-329. It was moved by Mr. Jones and

18 seconded by me.

19 If there's no further discussion, will the

20 secretary call the roll.

21 THE SECRETARY: Board Member Eaton.

22 MEMBER JONES: No.

23 THE SECRETARY: Frazee.

24 MEMBER FRAZEE: Aye.

25 THE SECRETARY: Jones.

26 MEMBER JONES: Aye.

1 THE SECRETARY: Rhoads.

2 MEMBER RHOADS: No.

3 THE SECRETARY: Chairman Pennington.

4 CHAIRMAN PENNINGTON: Aye. Motion fails.

5 Let me try --

6 MEMBER EATON: I move we kick this over to
7 November 5th. Let me make that motion.

8 CHAIRMAN PENNINGTON: Your motion dies for
9 lack of a second.

10 Let's try this. Let's talk about what I
11 think is probably the stumbling block here, and that's
12 Number 9, where we talk about Sears' response to -- and
13 then kicking them out. Is there some way -- I guess my
14 feeling, that was the only thing in this that really
15 kind of caught my eye --

16 MEMBER EATON: But there's other issues.
17 The issues of random sampling --

18 CHAIRMAN PENNINGTON: Excuse me. Can I
19 finish?

20 MEMBER EATON: Sure.

21 CHAIRMAN PENNINGTON: Thank you.

22 My concern was that, gee, you could get an
23 awful lot of people that once they know that that's a
24 way to get out, and we can get down to, you know, maybe
25 only five percent, and there's no -- no incentive for
26 them to comply with your wishes, and there is no

1 punishment to them for not complying with your wishes.
2 I guess I'd like to see something in there that says,
3 you know, you guys are going to do something about the
4 people that aren't even trying to comply with you.

5 MR. ZBUR: I think -- Is it appropriate for
6 me to respond to that, Mr. Chairman?

7 CHAIRMAN PENNINGTON: Yes. Sure.

8 MR. ZBUR: Part of the concern that we had,
9 and the reason we had suggested dropping them out is
10 that if we just can't get the information -- you know,
11 we can't get the information within that time frame, I
12 think what we suggested to staff is that, with respect
13 to those, we'd be willing to go back to those folks and
14 work with you on additional ways of doing it, but what
15 we saw this exercise, frankly, as being -- one of the
16 things we thought would be helpful, was that we spelled
17 out, I think in a fair amount of detail, what we would
18 do with respect to all of these companies, the real
19 product manufacturers, in terms of how -- getting
20 information. We spelled that out in details so you
21 would know exactly what we were doing, and it was
22 spelled out. And I think one of the things this tells
23 you is how difficult it's going to be for your
24 regulatory focus to be on the merchandiser, as opposed
25 to the people who are really making the products, and
26 that's why we suggested spelling it out in that level

1 of detail. We don't know how hard it's going to be. I
2 mean, we may very well get 5 percent back. We may get
3 29 percent back. You know, we just don't know, and
4 rather than have us go out for six months and go back
5 and forth, we figured, you know, we'll go through and
6 do these things in this period of time, and then we'll
7 report back to you what we did and what the results
8 were. And that's why we did it.

9 We're open to other suggestions. I mean,
10 frankly, if you'd like us to have an additional round
11 of us doing more calls after that period of time and
12 trying harder to get the information back, you know,
13 we're happy to entertain those suggestions.

14 MR. RHOADS: If I might, that's why I was --
15 made the motion I did is -- and also because of -- it's
16 easier to deal with this issue during in the compliance
17 when we can see what are the results and make a
18 judgment then. I am worried about, you know, accepting
19 this protocol right now. I just think we'd have more
20 options available to us if we waited.

21 I know it puts Sears in a little bit of an
22 awkward position, and I would just urge you to -- if we
23 don't come to resolution of anything, I would just urge
24 you to continue to work with staff on this, and then we
25 can deal with it during the compliance issue.
26 I for one am very impressed about the effort

1 that you have made to comply with this, and I also
2 understand the fact that the law is a little vague on
3 this particular issue about whether you quality or not.
4 I think you folks have put a lot of time in this and a
5 little effort, and I appreciate that. I just feel it's
6 more appropriate to deal with it during the compliance
7 than to deal with it right now.

8 MR. ZBUR: If I may suggest one thing that
9 may be something for the Board to consider.
10 I think it would be helpful for us if we
11 could come back -- go back to Sears and indicate that
12 this Board, as a matter of policy, indicated that
13 protocols of this type would be considered good faith
14 attempts, or would be part of the considerations of
15 what would be a good faith attempt at the time a
16 decision was made to enforce or not enforce. If there
17 could be some indication as a matter of policy that
18 this is an example of the type of protocol that would
19 be taken into consideration, I think that would be
20 helpful.

21 MEMBER EATON: Mr. Chairman?

22 CHAIRMAN PENNINGTON: Mr. Eaton.

23 MEMBER EATON: I don't think there's any
24 doubt, but as you know any good lawyer worth their salt
25 will wait till all the evidence is in.

26 MR. ZBUR: I'm sorry. Say that again.

1 MEMBER EATON: I said, I don't have a
2 problem with that, but like any good lawyer, I would
3 wait till all the evidence is really in, and I don't
4 want to -- I think what we're saying here, and what I
5 hope you would understand, at least what I'm trying to
6 relate, as well as the staff, as well as Mr. Rhoads
7 here, is that you definitely will not be penalized for
8 the kinds of efforts that you've made, and I think also
9 one of the situations here is that we're going to come
10 back on November 5th. If we went and followed
11 protocol, we wouldn't get any information back until
12 the 7th, so how do we deal with Sears on the 5th,
13 because you're talking about -- correct? 'Cause your
14 protocol goes all the way into December, first and
15 foremost. So I'm just trying to say, and I think that,
16 you know, that everyone, when it's open -- I don't
17 think there's a problem with relaying -- I think you've
18 heard the dialogue here. I think that you can
19 articulate the argument that we tried to be fair. We
20 are fair. You're making good faith efforts to try to
21 meet us halfway, and we've got some sticky problems to
22 work through. I think that we can all work through
23 those. I think that you can carry back to the company
24 a couple of things. One, the fact that the type of
25 procedure that they're following to obtain the
26 information is a valid one and well grounded in what

1 the Board is seeking to obtain.

2 Two, I think it also puts them in a position

3 to help you when you speak with your CEO and your

4 implementation as to the kinds of avenues that a

5 company such as Sears or anyone else might look to in

6 terms of when they have the purchasing power and/or

7 what information they need in their contracts with

8 their suppliers? I cannot believe that there's not a

9 hold harmless clause in a contract by a supplier who

10 supplies to such a retailer as yours. At least, if

11 not, then perhaps maybe then there might be some other

12 kinds of assurance available to seek another kind of

13 recourse.

14 But I think the whole point is that we're

15 putting the cart before the horse. The whole idea of

16 November 5th is to try to get everything in here.

17 Everyone's trying to hedge in making a good faith

18 effort by Sears. What happens -- and I'm just being

19 hypothetical -- if someone else comes in on

20 November 5th and even goes five steps further than

21 Sears has? Both are good faith. Then we have an

22 evaluation as to the enforcement side or nonenforcement

23 side, and, quite frankly, I think we're a long way away

24 from trying to fashion some of the remedies in this

25 whole law. I think what we're looking for is not in

26 the information, but some the traps for the unwary

1 that may lie out there, and you've tried to unveil some
2 of the traps that are there, and I don't think that
3 this Board is unsympathetic to that.

4 Does that make sense to you?

5 MEMBER JONES: Mr. Chairman?

6 CHAIRMAN PENNINGTON: Mr. Jones.

7 MEMBER JONES: Okay. Try it again.

8 I'll make a motion that we not adopt or deny
9 the protocol, but consider at the time of compliance
10 that protocol is a good faith effort on the part of
11 Sears and Roebuck.

12 CHAIRMAN PENNINGTON: I'll second that.

13 MS. TOBIAS: Could I add something in there
14 that says -- a small caveat that says something to the
15 effect that -- sorry -- I'm having a hard time
16 thinking -- that would be not an example of a good
17 faith effort, but I guess, Mr. Jones, are you getting
18 to the point that you are saying today that this is
19 going to be a good faith effort, and you are so finding
20 today, or are you saying that it's your feeling at this
21 time that this is the type of program that could be
22 considered as a good faith effort?

23 Sorry. I'm just being an attorney.

24 MEMBER JONES: See, I don't look at one
25 program as being all that is included in good faith
26 effort.

1 MS. TOBIAS: Okay.

2 MEMBER JONES: As we explained down in
3 Santa Barbara, that it is going to take a lot of
4 programs for cities and counties to be able to comply
5 with good faith effort, but I don't want them leaving
6 this building without knowing that this Board is going
7 to consider this as a good faith effort. Maybe not the
8 only good faith effort that would be required, but this
9 would definitely be considered a big piece of a good
10 faith effort.

11 MR. RHOADS: Yeah, that's what I think is
12 bothering us. Are we saying if you do this, you're
13 going to comply, period?

14 MEMBER JONES: No. I am saying at the time
15 of compliance this program will be considered to have
16 been a good faith effort, not the only good faith
17 effort, but it is not going to be against them. There
18 has to be something they can take back and say, "We
19 have a result." You know, "We have at least a portion
20 of the final product."

21 MEMBER EATON: Here's the problem. You're
22 making a determination based upon a proposed plan of
23 action that may or may not come about, so for you to
24 include good faith in the motion already predetermines
25 that irrespective of what they do, the fact that they
26 proposed this or carried it through, perhaps maybe --

1 let me just bring some legalese for you. I think that
2 I know where you want to go with this. I think that
3 perhaps if you had -- that such efforts by Sears or
4 others -- because others could very well fit; correct?
5 You're not just saying Sears, but others could have
6 similar efforts; is that correct?

7 MEMBER JONES: No. This protocol --

8 MEMBER EATON: See, that's the problem. If
9 you get down to a specific protocol, you exclude every
10 other protocol that may -- or every other type of
11 effort, and all I'm trying to do is get a -- to be more
12 inclusive.

13 MR. RHOADS: Or how about --

14 MEMBER EATON: Where such efforts -- if
15 you'll just let me just finish -- where efforts such as
16 Sears or others who may undertake other efforts to
17 obtain the information, be given do consideration and
18 weight in making determination as to whether or not a
19 good faith effort has been made.

20 You preserve everything, and I think you
21 understand what I'm saying, because there might be
22 factors that go in, and I don't know where -- I'll let
23 the legal counsel sort of go through -- but, I mean,
24 there you have -- you not only -- you may find other
25 things that you want to bring into it that you've done
26 as well that also should be.

1 And I'm just sort of -- I don't know.

2 Katherine, do you sort of kind of get that effort --

3 MR. CHANDLER: Can you state it again?

4 MEMBER EATON: Sure. Efforts such as Sears

5 or others may undertake, be given due consideration in

6 weight in making determination during the compliance

7 phase as to whether or not a good faith effort has been

8 completed.

9 MR. CHANDLER: So I've got a few notes here.

10 Let me take a stab at this.

11 CHAIRMAN PENNINGTON: Wait a minute.

12 First thing we've got to do is, we've got a

13 motion on the floor here --

14 MR. CHANDLER: I'm sorry.

15 CHAIRMAN PENNINGTON: -- and we either have

16 to have it polled or we need to vote on it.

17 MS. TOBIAS: You need a second.

18 CHAIRMAN PENNINGTON: I seconded.

19 MS. TOBIAS: I think what we were trying to

20 do was craft some language that we would consider

21 asking Mr. Jones --

22 CHAIRMAN PENNINGTON: I understand that, but

23 you're also concerned about the record, and so we've

24 got to get one motion out of the way before we deal

25 with another one.

26 MS. TOBIAS: I think we were just trying to

1 help him on his motion, not come up with a different
2 motion.

3 CHAIRMAN PENNINGTON: I see.

4 MEMBER JONES: I love it when you guys help
5 me. I'll hold my motion in suspense just for a minute
6 until I hear them, if that's okay, or I'll pole it,
7 whatever the heck I have to do.

8 CHAIRMAN PENNINGTON: Sure. Go ahead.

9 MR. CHANDLER: This is a little rough, but
10 let me try again. Danny, I might need some help.
11 The Board acknowledges the protocol offered
12 by Sears as valid and well grounded and will give the
13 protocol full consideration as a good faith effort when
14 the process proceeds to the compliance phase.
15 Now, what Danny was just adding is -- and we
16 can rephrase it -- the Board acknowledges the protocol
17 offered by Sears as valid and well grounded and will
18 give the protocol and others -- you said and other
19 measures that may come forward -- other protocols that
20 may be offered?

21 MEMBER EATON: There may be other companies,
22 manufacturers --

23 MR. CHANDLER: Any other --

24 MEMBER EATON: Entity.

25 MR. CHANDLER: -- and any other entity
26 proposals full consideration as a good faith effort

1 when the process proceeds to the compliance phase.
2 So I think what I was hearing that they were
3 looking for is, they were looking for some
4 acknowledgement today that the protocol that they're
5 offering will be considered as valid and in the form of
6 a good faith effort. So I was attempting to craft that
7 into the staff recommendation, but getting to the point
8 that we will consider this at the time of compliance
9 when it comes forward in that phase of this process,
10 and if you want to add any other good faith efforts
11 offered by any other entity, we'll need to craft that
12 into that.

13 MEMBER JONES: That do business with Sears?

14 MR. CHANDLER: I don't believe it was
15 necessarily doing business with Sears. It was with --

16 MEMBER JONES: See, that's a policy issue.

17 CHAIRMAN PENNINGTON: I think that's a
18 given. If somebody comes in with another proposal, we
19 can then decide whether we think that is a good faith
20 effort or not. It doesn't have to have any effect on
21 what Sears is doing. I believe we have that right to
22 do that.

23 MEMBER EATON: Sure. My point is, if you
24 want to take it and limit it to Sears, Chat's fine, but
25 you also cannot make presumptions or give a -- and I
26 guess part of it is our training -- a position by which

1 you have already provided that Sears, just by what they
2 have done here, has provided a good faith effort
3 without having seen what really is going to take place.

4 CHAIRMAN PENNINGTON: As a result of what
5 they've done there.

6 MEMBER EATON: Right, because here you've
7 got till December 14th under this. I'll I'm saying is
8 that, you know, what is it that you're looking for? If
9 you're looking for Sears, we don't really have to do
10 anything, because no matter what's crafted, they're
11 going to have to go back and spend dollars. I think
12 that the key here is that these are the -- perhaps
13 maybe one of the other things that might be
14 advantageous is to look at whether or not we should
15 just grant -- if we have the authority -- a 60-day
16 extension across the Board for all those entities by a
17 certification, if we have the authority to do so, and I
18 don't know the answer, and then we solve the problem of
19 protocol and everything else, and we avoid all of the
20 other arguments, and we don't for close anyone from
21 bringing in anything, and it doesn't foreclose Sears
22 from doing what they need to do as well.

23 CHAIRMAN PENNINGTON: I don't think we are
24 foreclosing anybody. I think we're saying this
25 protocol that you have brought forward, if you follow
26 this protocol out, it is likely we will consider that

1 good faith effort if we can't reach the goals that we
2 want to. That's not precluding anybody else from doing
3 the same sort of thing and bringing it to us saying,
4 "Look. We want to do like Sears, and here's our plan."

5 MEMBER EATON: And then if we decide to find
6 them in noncompliance and we attempt to exercise the
7 craft, a remedy, and they'll sue us because they think
8 we've already made a finding in good faith, and how
9 could we go back, and on and on it goes. It doesn't
10 make sense. Counsel would even agree with me on that.

11 MR. ZBUR: Well, I think the one thing that
12 distinguishes this case is that no one else has come in
13 within the time period allotted by this Board and
14 actually proposed a protocol. I mean, as of, I think,
15 tomorrow, no one will have come today and suggested
16 this. So, I mean, we're talking about a subset of
17 companies that includes one. I don't think anyone has
18 expended the resources that Sears has that has complied
19 or not complied. I think it's a very limited group.
20 I, frankly, would like to see the Board make
21 a determination that if Sears does these -- obviously,
22 if Sears doesn't make the phone calls, if they don't
23 send the letters out, if they don't do those things, I
24 can't imagine why you would find them in good faith
25 compliance, but if they do those things at the end of
26 this process and submit those things, I would hope that

1 the Board would give indication that that would be
2 considered a good faith effort, at least for 1996, and
3 then with a commitment on the part of Sears that it
4 would come back and work with you on either amending
5 the regulations or figuring out something that makes
6 sense for retailers to meet your objectives in the long
7 run as part of your regulations or legislation.

8 MEMBER EATON: Because we may be in a
9 similar position with another entity that has made also
10 those efforts, and they could be in noncompliance as
11 well. The fact of the matter is, is that the fact that
12 you may or may not have the information without having
13 some of the other compliance issues flushed out is not
14 a prima facie case that you just walk away,
15 irrespective of the product manufacture definition or
16 not, and I'm just trying to preserve everyone's ability
17 and everyone's right to kind of not foreclose anything.
18 I think there are greater issues here than just Sears.
19 You're right. You are a subset, but if you all of a
20 sudden make a determination in good faith and you don't
21 provide the information, then who else can come through
22 and use that? And that's the greater issue for this
23 Board, and trying to craft something uniquely to Sears,
24 I don't generally have a problem with, but I think when
25 you start getting into good faith efforts, the
26 information's there, and whether we like the law or

1 not, it needs to be enforced, and someone's going to
2 enforce it at some point, or they're going to throw it
3 out, and maybe we've got to go in as a declaratory
4 relief and seek that. I don't know. But I know that
5 there will be people, whether it be you or those on the
6 other side, who are going to seek a legal remedy if we
7 don't try and at least solve the problem in a way that
8 avoids some of the pitfalls

9 MS. TOBIAS: Let me try to parse this
10 motion language, because I think it addresses some of
11 the issues you've raised

12 First of all, it says the Board acknowledges the
13 protocol offered by Sears. It doesn't say we approve
14 it. It doesn't say that we find that their effort is
15 ultimately in good faith. It says that their protocol
16 appears to be valid and well grounded. So it simply
17 says the procedure that they're laying out, you know,
18 appears to us -- and I think this is what the staff
19 recommendation was -- valid and well grounded, and the
20 Board will give the protocol full consideration as a
21 good faith effort should the process proceed to
22 compliance

23 So it basically says they will give it full
24 consideration. As we all know, the consideration item is
25 opened to full discussion. So, first of all, they will
26 have to comply with the procedure that they've

1 laid out. They will basically have to do everything
2 they've said. They will come forward with the
3 information. Then the Board will basically look at,
4 you know, whether that, in fact, does constitute a good
5 faith effort, but I think what we're trying to do is
6 give them the assurance that staff, who, I think, is
7 the one that would give the recommendation to the
8 Board, that their procedure or process seems to be
9 workable, and that the Board agrees to look at that in
10 consideration of a good faith effort. So I think you
11 raised some interesting points. I think from a legal
12 standpoint, I would prefer that this motion be limited
13 to Sears. I think they're the ones who came in.
14 They're the ones on the item, and I'm a little bit
15 concerned that if the motion concerns "and others" it
16 will allow others to come in and ask for the same
17 thing.

18 MS. TRGOVICH: Nor are there any others who
19 have contacted us regarding any additional protocol or
20 other approach. They're either submitting the
21 information, or they've chosen not to. Sears is
22 unique.

23 MR. RHOADS: I feel very comfortable. I
24 would like to know how Sears feels about it.

25 MR. ZBUR: I think we would go ahead and
26 support that if the Board would go forward with that.

1 MR. RHOADS: I think it might also be
2 appropriate to ask Mr. Best how he feels about that
3 also.

4 MR. BEST: Thank you, Mr. Rhoads. I think a
5 couple of issues.
6 Number 1. I think from your prospective, as
7 I'm understanding this, the idea in its evaluation that
8 this is not definitive whether or not it's a good faith
9 effort. So that's of one thing that's important to us.
10 The second issue, though, is with regards
11 Co -- the major concern that we have with this protocol
12 is the Number 9, with regards to the dropping of
13 products that information is not provided for. You
14 know, we have problems with that as a principle, and
15 even having this be included in the protocol, we have
16 concerns with. So we would recommend that be
17 eliminated from the proposal. Certainly, if that
18 information isn't made available, that will be something
19 that will be considered in the evaluation process. We
20 recognize that. You know, if the company comes to the
21 Board, says, "Look, we just couldn't get that
22 information," that's going to be part of the record,
23 but to state in this protocol that that would be
24 eliminated from the consideration of the sample survey,
25 we just have a problem with that.

26 MS. TOBIAS: Would a middle ground on that

1 be to basically have Sears show what product that was
2 and perhaps -- I'm throwing this out, so either staff
3 or Sears can tell me this won't work -- to basically
4 have Sears identify the product and perhaps even the
5 manufacturer show that that was not available. You
6 know, in essence there's a practicability maxim that
7 says that you can't be required to provide something
8 that's not -- that you are unable to provide.
9 Again, I think that the Board would have to
10 basically make sure in your procedure that you tried,
11 you know, the best that you could to get that, and by
12 providing the name of the manufacturer who was not able
13 to provide that information to you, that might provide
14 the Board with the ability then to go to Sub D and
15 pursue those people in ensuing years if that
16 information is not available.
17 I don't know what kind of position that puts
18 you in with your suppliers, but it seems to me that
19 might be a midground, and maybe that's something you
20 can get back to us on.

21 MR. ZBUR: Yeah. I mean, we have concerns
22 about proprietary information, which I think we need to
23 go back to discuss internally on that.

24 MS. TOBIAS: Maybe what the Board could do
25 is basically, if that meets -- if that's a middle ground
26 for you, maybe you could basically make that part of

1 the motion, and then Sears could come back and say why
2 that's not going to be practical or why you can't meet
3 that.

4 MS. TRGOVICH: Perhaps I can just add as
5 well, because Sears wasn't a part of the earlier
6 discussions, but our contract with Price-Waterhouse
7 calls for strict confidentiality of the proprietary
8 information, so the information would not be disclosed
9 in the context of the November 5th item or any
10 subsequent items here, but it would potentially form the
11 basis under Sub D if there is a '97 or '98 cert
12 process of that manufacturer simply being added to the
13 list.

14 MS. TOBIAS: So it wouldn't necessarily
15 be tied to Sears having provided that information?

16 MR. ZBUR: I think if the Board is not
17 approving the protocol today, I think we'd like to sort of
18 go back and discuss that and just sort of understand the
19 ramifications of it, but we understand the point that your
20 staff is making, and we'll consider that.
21 I guess what I would suggest the Board do today is
22 acknowledge something along the lines of what the staff has
23 suggested. Obviously, I think we would prefer that there be
24 more of an indication if we do -- if Sears does this, that
25 it will be considered good
26 faith compliance with the regulations, at least for

1 1996. It is a hard thing to go back to the folks and
2 say, "Look, we're going to engage in this whole effort,
3 and this is going to be one small piece of some
4 broader" -- I mean, we're telling you, I think, where
5 we are today. I don't know what else would be
6 considered in terms of whether we comply or not comply.
7 Maybe the percentage of what actually comes in, but I
8 think we're giving you a sense of what we plan on
9 doing, and whether it's limited to Sears or not limited
10 to Sears, I don't think that we have strong feelings
11 about that. We would like to have some assurance that
12 if they expend this effort and go through this
13 exercise, with the manpower that it's going to take in
14 allocating a large chunk of their environmental staff
15 to do this, that there's going to be some benefit in
16 the long run, both for this agency and for Sears, and
17 so I think we would like to have -- I mean, in just a
18 response to Mr. Best's comments, we'd like to have
19 more -- a little bit of assurance that, in fact, this
20 is not some small -- 1 of 15 factors that's going to be
21 considered in taking enforcement action. We at that
22 point, I think, would be in a position where we would
23 have to -- and we have not waived that -- you know,
24 challenge the Board on the applicability of all of
25 this. We don't really want to be in a position to have
26 to do that, but I think the -- you know, it raises that

1 type of exercise, and I think we'd like to be working
2 with you rather than fighting this staff and the Board
3 in an enforcement action.

4 MEMBER EATON: The flip side of that would
5 be that if for some reason in 1997 there is no
6 certification process required, you've also reserved
7 your right to basically challenge the '96 certification
8 process using '97 data.

9 MR. ZBUR: I'm sorry. I'm not sure if I'm
10 following your point, Mr. Eaton.

11 MEMBER EATON: The step-by-step protocol
12 that's here, there's also other issues of using other
13 information for years more recent that provides a trap
14 for us and a slippery slope for this Board, that we
15 would have to then provide and use '97 and '98
16 information to determine '96 compliance, whereas in --
17 if for some reason you might be in a position where in
18 '97 there might not be anything required. I can see a
19 number of legal challenges arising on behalf, not only
20 of you, but of others with regard to these particular
21 items.

22 I don't think its -- you know, you look for
23 assurances. Everyone's trying -- you know, we're sort
24 of cutting hairs here. The question that I have is I
25 think we understand where you are. You understand
26 where we are. Assurances beyond wherein the greater

1 issues that this Board might face isn't always the
2 case. I'll also provide you another maxim. Ignorance
3 of the law is no excuse, and you know we can do maxims
4 out of the maxim book, and I think depending on which
5. judge you get --

6 MR. RHOADS: Let's not go down that road.

7 MR. ZBUR: I would just suggest moving
8 forward with something along the lines of what was
9 proposed.

10 MEMBER EATON: Did you have a problem of
11 just handling the issue in a compliance setting?

12 MR. ZBUR: No. I think our goal is that
13 hopefully by working with the Board and the staff on
14 something like this, that you will be in a position
15 ultimately not to make a finding of noncompliance for
16 Sears at the end of this process. That is our hope and
17 our goal, and I believe that that is the goal of others
18 who want to make sure the companies who are doing the
19 right thing are treated fairly.

20 CHAIRMAN PENNINGTON: Mr. Rhoads.

21 MEMBER EATON: You don't even know if you're
22 doing the right thing; correct?

23 MR. ZBUR: We'll, we don't know that we were
24 intended to be subject to this requirement.

25 MEMBER EATON: Different answer. Question,
26 you don't know whether or not you're in compliance or

1 not, even if the information's available? And I'm not
2 trying to be argumentative, but I'm saying, you know,
3 you're preserving all your options --

4 MR. ZBUR: In order to that question --

5 MEMBER EATON: -- while cutting off some of
6 our options, and I don't think that's where we should
7 be. I think if it's, you know, we sit across from the
8 table, we say, "Okay. We know what you're doing.
9 Great. We'll handle it in the compliance issue."

10 You know, you do have other alternatives to
11 go back to Sears with. You have legal. You have to
12 say, "You know, we pay the 100,000. They may not even
13 fine us."

14 This Board has a history, and I think a good
15 one, that when they get to that point that's a real
16 drastic step. I think it's a drastic step for anyone,
17 because that's not really where you go. You're not
18 looked at as an egregious kind of, you know, bad actor.

19 MR. ZBUR: I think, you know, we come in the
20 spirit of wanting to work with the Board and the staff,
21 and I think, frankly, at this point what I would
22 suggest is that the Board move forward with a --
23 something along the lines of what Ms. Tobias has
24 suggested, and that we would be supportive of that, and
25 I think would look forward to working with the Board
26 and the staff on a process moving forward and --

1 CHAIRMAN PENNINGTON: Mr. Rhoads.

2 MR. RHOADS: I'd be willing to move that,
3 but I don't want to take the microphone away from
4 Mr. Jones who had it first.

5 CHAIRMAN PENNINGTON: Mr. Jones, did you
6 have a motion?

7 MEMBER JONES: I don't know. After the last
8 one, I was going to ask Bob to come back up with his
9 definition of a manufacturer.
10 Go ahead, Mr. Rhoads.

11 MR. RHOADS: I'd like to move the motion,
12 and maybe Katherine can state it again.

13 MS. TOBIAS: Sure. The Board acknowledges
14 the protocol offered by Sears appears to be valid and
15 well grounded and will give the protocol -- and the
16 Board will give the protocol full consideration as a
17 good faith effort should the process proceed to the
18 compliance phase.

19 CHAIRMAN PENNINGTON: I'll second it.
20 Okay. If there's no further discussion,
21 will the secretary call the roll.

22 THE SECRETARY: Board Member Eaton.

23 MEMBER EATON: No.

24 THE SECRETARY: Frazee.

25 MEMBER FRAZEE: Aye.

26 THE SECRETARY: Jones.

1 MEMBER JONES: Aye.

2 THE SECRETARY: Rhoads.

3 MEMBER RHOADS: Aye.

4 THE SECRETARY: Chairman Pennington.

5 CHAIRMAN PENNINGTON: Aye. Motion carries.

6 MR. ZBUR: Thank you very much.

7 CHAIRMAN PENNINGTON: Thank you.

8 Okay. We are going to just move Item

9 Number 10 to the October 21st meeting.

10 Is there some reason that Number 11 has to

11 be done?

12 MS. TRGOVICH: Number 11, this was the item

13 that we requested to be brought back as soon as

14 possible, because if we are not moving on the concept,

15 then the spring campaigns won't be able to proceed.

16 It's a timing issue.

17 Addendum Item 1 is timing issue as well.

18 CHAIRMAN PENNINGTON: I understand. We're

19 going to move 12 to the October 21st meeting. Okay.

20 AGENDA ITEM NUMBER 11

21 CHAIRMAN PENNINGTON: Consideration of

22 approval of the regional campaign portion of the

23 Contract Concept 46, Grass Cycling Outreach Campaign

24 for fiscal year 1998/99.

25 Folks, we're all supposed to be going to

26 Santa Clara, so can we try to be as concise as we can.

1 MEMBER JONES: This can't wait two weeks?

2 MS. TRGOVICH: I believe that when staff
3 were here last time, they said that if we can't get
4 something on the street by the end of October, which
5 means we have to go through the whole process internally,
6 that we will not be in a position to have spring
7 campaigns

8 CHAIRMAN PENNINGTON: Okay. Mr. Orr.

9 MR. ORR: I will make short
10 My name is Bill Orr. I'm the manager of the
11 organics and resource efficiency branch

12 The item before you this afternoon is to
13 consider the expenditure of \$450,000 from this year's
14 Consulting and Professional Services Funds for the
15 implementation of three regional grass cycling
16 campaigns.

17 Add its September 18th meeting, the
18 Board approved \$100,000 to complete the the grass cycling
19 video, and I'm here before you today to follow up on the
20 discussion regarding regional campaigns

21 Grass cycling is easy, simple, fast,
22 immediate, and effective, and basically the staff's
23 considered approach is to implement targeted, focused,
24 regional campaigns, looking at three regions of the state
25 that make up approximately two-thirds of the glass
26 clippings generated in the state. Through the

1 implementation of these three regional focused
2 campaigns, we believe that we can approach between a
3 half a million and a million tons of grass within
4 25 percent participation rate in those geographic
5 regions.

6 We polled local interest on the part of the
7 three regions that have been tentatively identified.
8 That would include Los Angeles and Orange Counties as
9 one region, the San Francisco Bay Area and the
10 surroundings counties as a second region, and then in
11 third, Inland Empire region, which would include the
12 Riverside and San Bernadino Counties.

13 There has been a definite interest in all
14 three of the regions, however, there have been definite
15 concerns voiced about the timings of the campaigns
16 relative to the local budget cycles and their ability
17 to raise the matching funds that have been identified.
18 Orange County/L.A. region is the furthest
19 along, and has a standard steering committee in place
20 and has been able to tentatively identify the necessary
21 matching funds. The other two regions are not as far
22 along. I would say San Francisco Bay Area would be the
23 next furthest along in terms of a regional campaign,
24 and then Inland Empire would be behind them, but they
25 do not have steering committees currently in place.

26 We've also attached to this agenda item a

1 boiler plate scope of work that would be used as a
2 starting place for discussion with the regions
3 regarding these regional campaigns. The options that
4 are presented for the Board's consideration are
5 basically three.
6 One of them would be to fund \$450,000 for
7 all three of the regional campaigns.
8 The second option would be to allocate
9 300,000 for two of the regions.
10 And the third option as presented would be
11 to allocate 350,000 for one regional campaign this
12 year.
13 The staff recommendation is to adopt the
14 first option, funding all three of the grass cycling
15 campaigns, and if one of the things that has come up
16 in discussion is in regard to, if the regions are --
17 the other two regions that I mentioned are not able to
18 come up with all of the matching funds, to have some
19 mechanism to consider additional allocations or
20 adjustments between the regions in terms of funding.
21 So that concludes my initial presentation.
22 Are there any questions that I can answer?
23 MEMBER EATON: Yeah, I have a couple.
24 As you know, we had a discussion. My
25 understanding is that we do not have -- we only have
26 one entity that's on board; is that correct? It's

1 ready to go and match the funds.

2 MR. ORR: As far as the discussions that are
3 currently going on right now, we have one region that
4 has provided us answers back that they tentatively
5 identified the matching funds, but it's sort of -- the
6 jurisdictions are sort of between a rock and a hard
7 place, because we haven't had anything to offer them up
8 until this point. So we've been working them
9 informally, and on an informal basis, one of the three
10 regions has been able to come up with a tentative
11 identification of matching funds, that's correct.

12 MEMBER EATON: And this is three-year money
13 so that if we were to give you the money for the entity
14 and for the outreach that has already agreed to do the
15 math, and then as other discussions take place with the
16 other regional campaigns as they come up with matching
17 funds, we have a precedent which shows that if you can
18 come up with the matching funds, we give you the money,
19 that, too, could work.

20 MR. ORR: That could work. However, what
21 that would mean is clearly the other two regions would
22 not be implementing campaigns this year.

23 MEMBER EATON: But you haven't got any
24 commitment that they're going to do it anyways. That's
25 the point. You've got one who's ready to go at the end
26 of October, which is why we stayed here this evening to

1 deal with that. If there's only one out of three,
2 let's just go with the one that's ready to go. As the
3 others come on board, we have the ability then to do
4 that. We also have the ability to better understand
5 what we learned from the first arrangement with the
6 first regional entity that wants to go. You learn by
7 entering into the negotiation process, and you take
8 something away. So if we're not there yet with the
9 second, why not -- the money's not going anywhere.

10 MR. ORR: That would definitely work. I
11 think the recommended staff approach was simply that we
12 would get the initial conceptual approval. We would
13 negotiate with the regions and come back with actual
14 contracts for further consideration by the Board. But
15 either approach would work.

16 MEMBER EATON: I think we do the one that
17 we've got ready the money to come from, and let's go on
18 and let's see what we can bring back.

19 CHAIRMAN PENNINGTON: Mr. Frazee.

20 MEMBER FRAZEE: I was just prepared to go
21 with the staff recommendation, the way that it's
22 drafted.

23 MS. TRGOVICH: Staff Recommendation 1, which
24 was 450,000 for the three campaigns, Option Number 3,
25 which was the 150,000 for the initial campaign and have
26 staff come back at the time that the other two regions

1 sign on.

2 MEMBER FRAZEE: But you're coming back
3 anyway.

4 MS. TRGOVICH: Correct.

5 MEMBER FRAZEE: So this is conceptual
6 approval and it gives them some negotiating room.

7 Well, there's a lull Mr. Chairman.

8 I'm going to move to adoption of
9 Resolution 98-331.

10 CHAIRMAN PENNINGTON: I'll second that.

11 MEMBER JONES: When Mr. Frazee was
12 explaining that logic, Mr. Eaton reading part of that
13 proposal, and I'll just ask for your -- 'cause I think
14 it gets at what both want, but I don't know. It
15 doesn't matter.

16 What was the motion again?

17 CHAIRMAN PENNINGTON: Mr. Frazee was to
18 adopt Resolution 98-331. 98-331. It was moved by
19 Mr. Frazee, seconded by the chair.

20 If there's no further discussion, will the
21 secretary call the roll.

22 MEMBER EATON: Can I get clarification that
23 those contracts are going to come back?

24 MR. ORR: Absolutely.

25 CHAIRMAN PENNINGTON: Yes.

26 MEMBER EATON: And there will be an

1 evaluation of each of the campaigns as we spoke about.

2 MR. ORR: Absolutely.

3 MEMBER EATON: Independent?

4 MR. ORR: Yeah.

5 MEMBER EATON: And not provided by the
6 entity that you're contracting with as proposed in the
7 contract you have, that the entity is to evaluate
8 themselves as opposed to the Board evaluating the
9 campaign?

10 MR. ORR: I think staff is prepared to
11 take direction requiring independent verification.

12 MEMBER JONES: Good. Did somebody second
13 that?

14 CHAIRMAN PENNINGTON: I did.

15 MEMBER JONES: All right.

16 CHAIRMAN PENNINGTON: Any further
17 discussion? If not, will the secretary call the roll.

18 THE SECRETARY: Board Member Eaton.

19 MEMBER EATON: Aye.

20 THE SECRETARY: Frazee.

21 MEMBER FRAZEE: Aye.

22 THE SECRETARY: Jones.

23 MEMBER JONES: Aye.

24 THE SECRETARY: Rhoads.

25 MEMBER RHOADS: Aye.

26 THE SECRETARY: Chairman Pennington.

1 CHAIRMAN PENNINGTON: Aye. Motion carries.

2 ADDENDUM AGENDA ITEM NUMBER 1

3 Move to Agenda Item -- Addendum Agenda

4 Item 1, consideration of approval of the scope of work

5 for an interagency agreement for the Department of

6 Conservation to conduct surveys of rigid plastic

7 packaging container processors and reclaimers for 1997.

8 Ms. Trgovich.

9 MS. TRGOVICH: What I would ask the Board at

10 this point, given the hour, is would -- the purpose of

11 this item is to approve the actual scope of work so we

12 can execute the contract. It contains the same

13 elements as this contract did last year with the

14 Department of Conservation. It adds a reclaimer

15 survey, which was the direction of the Board.

16 If you would like, I could answer questions

17 or provide a fuller presentation. And Cindy Young from

18 the Department of Conservation has been sitting in the

19 audience since 9:30 this morning.

20 Raise your hand, Cindy.

21 CHAIRMAN PENNINGTON: Boy, I hope somebody's

22 going to buy you a martini.

23 MS. TRGOVICH: We'll all be on the road to

24 Santa Clara.

25 MEMBER JONES: Mr. Chairman, I'll make a

26 motion that we adopt Resolution 98-337.

1 MEMBER FRAZEE: I'll second.

2 CHAIRMAN PENNINGTON: It's been moved by
3 Mr. Jones, seconded by Mr. Frazee. If there's no
4 further discussion, will the secretary call the roll.

5 THE SECRETARY: Board Member Eaton.

6 MEMBER EATON: Aye.

7 THE SECRETARY: Frazee.

8 MEMBER FRAZEE: Aye.

9 THE SECRETARY: Jones.

10 MEMBER JONES: Aye.

11 THE SECRETARY: Rhoads.

12 MEMBER RHOADS: Aye.

13 THE SECRETARY: Chairman Pennington.

14 CHAIRMAN PENNINGTON: Aye. Motion carries.

15 Now, is the point for any open discussion
16 from anybody in the audience.

17 Hearing none, we're adjourned, five 37.

18 (Whereupon, the proceedings concluded at
19 5:37 P.M.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SOLANO)


I, JANENE R. BIGGS, a Certified Shorthand Reporter, licensed by the state of California and empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

That the proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on November 23, 1998.


Janene R. Biggs

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